



STOLL · KEENON · OGDEN  
PLLC

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**DOUGLAS F. BRENT**  
DIRECT DIAL: 502-568-5734  
douglas.brent@skofirm.com

May 7, 2010

RECEIVED

MAY 07 2010

PUBLIC SERVICE  
COMMISSION

Mr. Jeff DeRouen  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Boulevard  
Frankfort, KY 40601

*RE: An Investigation Into The Traffic Dispute Between Windstream Kentucky  
East, LLC, Brandenburg Telephone Company And MCImetro Access  
Transmission Services, LLC d/b/a Verizon Access  
Case No. 2008-00203*

Dear Mr. DeRouen:

Enclosed are an original and ten copies of MCImetro Access Transmission Services LLC's Response in Opposition to Windstream's Motion for Subpoena.

Please indicate receipt of this filing by placing your file stamp on the extra copy and returning to me via our runner.

Very truly yours,

STOLL KEENON OGDEN PLLC

Douglas F. Brent

DFB:

Enclosures

105138.116493/535497.1

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
MAY 07 2010  
PUBLIC SERVICE  
COMMISSION

In the Matter of:

AN INVESTIGATION INTO THE TRAFFIC )  
DISPUTE BETWEEN WINDSTREAM )  
KENTUCKY EAST, LLC, BRANDENBURG ) CASE NO. 2008-00203  
TELEPHONE COMPANY AND MCIMETRO )  
ACCESS TRANSMISSION SERVICES, LLC )  
d/b/a VERIZON ACCESS )

**MCIMETRO'S RESPONSE IN OPPOSITION TO  
WINDSTREAM'S MOTION FOR SUBPOENA**

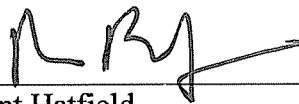
MCImetro Access Transmission Services, LLC ("MCImetro") opposes the issuance of the subpoenas requested by Windstream Kentucky East, LLC ("Windstream") in its April 21, 2010 motion.

The requested subpoenas would demand five years' worth of documents pertaining to "discussions" regarding the traffic at issue in this case from a number of specified persons. As Windstream admits, the time for issuing data requests in this proceeding expired on March 16, 2010. (Windstream Motion at 2.) Windstream attempts to justify what in effect are additional data requests outside the discovery period on the theory that information has been withheld from it during the discovery process. It claims that the "impact" of that evidence and the "knowledge" that other evidence may not have been produced "did not come to Windstream's attention" until MCImetro filed its most recent discovery responses on March 30, 2010. (*Id.*) To put it mildly, Windstream has misstated the facts.

The "new" evidence cited by Windstream is an e-mail string between MCImetro and Brandenburg Telephone Company that Windstream's witness Kerry Smith quotes at

page 4 of his Supplemental Rebuttal Testimony. But Windstream fails to note that MCImetro quoted the exact same language in a discovery response that MCImetro provided to Windstream on **July 31, 2008**. (See *MCImetro Access Transmission Services, LLC Responses to Windstream Kentucky East*, Response to Request No. 8, attached hereto.) MCImetro also provided a copy of the email at that time, in response to a document request. (See *MCImetro Access Transmission Services, LLC Responses to Windstream Kentucky East*, Response to Item No. 17, attached hereto.) Windstream has had this information for almost **two years** and its suggestion that it has recently discovered new evidence that has been withheld from it is simply wrong. Windstream has had ample time to ask follow-up discovery questions concerning the e-mail in question. The fact that it has not done so is due to Windstream's own lack of diligence, not any withholding of information by MCImetro. Windstream's motion should be denied.

Respectfully submitted,



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C. Kent Hatfield  
Douglas F. Brent  
STOLL KEENON OGDEN, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
Phone: (502) 333-6000  
Fax: (502) 333-6099

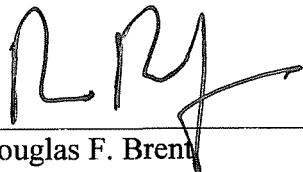
**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Response has been served by first class mail on those persons whose names appear below this 7th day of May, 2010.

Bruce F. Clark  
STITES & HARBISON, PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, Kentucky 40602-0634

John E. Selent  
Edward T. Depp  
Holly C. Wallace  
DINSMORE & SHOHL, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202

Allison T. Willoughby  
President  
Brandenburg Telecom, LLC  
200 Telco Drive  
Brandenburg, Kentucky 40108

  
\_\_\_\_\_  
Douglas F. Brent



**REQUEST NO. 8** Please identify all instances in which Verizon has acknowledged to Brandenburg or any other entity, including Windstream, that Brandenburg's routing of traffic through Windstream's Elizabethtown end office is contrary to industry routing protocols. Please provide in detail the circumstances surrounding such acknowledgement.

**Responsible Person:** counsel for MCImetro and Rick McGolerick

**RESPONSE:**

Objection. This response is vague insofar as it refers to undefined "industry routing protocols." Despite that objection and without waiving it, there have been communications between MCImetro and Brandenburg related to Windstream's claims about Brandenburg's local number portability queries and routing practices. On February 21, 2007, Rick McGolerick of MCImetro replied to an email from Randall Bradley of Brandenburg Telephone Company. Mr. Bradley's email included a message to Mr. Bradley from Windstream that discussed Brandenburg's routing. Mr. McGolerick's reply stated, in part:

Randall – I just left you a voicemail regarding the email below. During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AllTel tandem and it should be going to the Bell South Tandem. Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23<sup>rd</sup>?



**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 17** Please produce all documents identified, referenced, or otherwise implicated by the foregoing data requests and your responses to those data requests.

**Responsible Person:** counsel for MCImetro

**RESPONSE:**

Please see attached.



**Brent, Douglas**

---

**From:** Randall Bradley [rbradley@bbtel.com]

**Sent:** Wednesday, June 04, 2008 8:43 AM

**To:** McGolerick, Rick (Rick)

**Cc:** Turner, Mark (MarkETurner)

Rick,

Pursuant to our conversation yesterday morning, we have determined that Brandenburg Telecom can provision special access DS1's from our boundary to the Windstream switch at a monthly cost of \$380.99 per T-1 and a non-recurring installation cost of \$450.00 per T-1 over which AOL dial up calls from Brandenburg Telephone Company customers can be terminated.

Thanks,

Randall Bradley

270-422-2121

## Brent, Douglas

---

**From:** Randall Bradley [rbradley@bbtel.com]  
**Sent:** Monday, June 09, 2008 5:00 PM  
**To:** McGolerick, Rick (Rick)  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:** RE: POI Proposal

Rick,  
Brandenburg Telephone is not agreeable to the proposal to pay for half of the buildout of Verizon to get to the meet point of Brandenburg Telephone Co. and Windstream. Brandenburg Telephone has offered to provide at our own expense to bring facilities from Brandenburg's office to our current meet point with Windstream which is at the edge of Brandenburg's network in order to meet Verizon. Verizon can either buy special access facilities from another provider to get to this meet point, build out to this meet point, or may elect to purchase special access from Brandenburg Telecom, pursuant to our proposal by email on June 4<sup>th</sup>, in order to get to this meet point with Brandenburg Telephone Co.  
If you have any questions, please give me a call at 270-422-2121.  
Thanks,  
Randall

---

**From:** McGolerick, Rick (Rick) [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, June 06, 2008 3:46 PM  
**To:** Randall Bradley  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:** POI Proposal  
**Importance:** High

Randall -- VzB would be agreeable to build out to Brandenburg under a 50/50 split of the total expense for interconnection under a bill and keep arrangement. Please let me know if this agreeable to Brandenburg.

Thanks.

*Rick McGolerick*  
*National Carrier Contracts and Initiatives*  
*(703) 886 - 4032*



---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, June 04, 2008 8:43 AM  
**To:** McGolerick, Rick (Rick)  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:**

Rick,  
Pursuant to our conversation yesterday morning, we have determined that Brandenburg Telecom can provision special access DS1's from our boundary to the Windstream switch at a monthly cost of \$380.99 per T-1 and a non-recurring installation cost of \$450.00 per T-1 over

7/31/2008

which AOL dial up calls from Brandenburg Telephone Company customers can be terminated.

Thanks,  
Randall Bradley  
270-422-2121

**Brent, Douglas**

---

**From:** McGolerick, Rick (Rick) [rick.mcgolerick@verizonbusiness.com]  
**Sent:** Wednesday, February 21, 2007 1:40 PM  
**To:** Randall Bradley  
**Cc:** Turner, Mark (MarkETurner); Olson, Lee M (lee); Monroe, John  
**Subject:** RE: [Fwd: Brandenburg LNP Query]  
**Importance:** High

Randall – I just left you a voicemail regarding the email below. During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AllTel tandem and it should be going to the Bell South Tandem. Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23<sup>rd</sup>?

Please give me a call today to discuss, thanks.

*Rick McGolerick*  
*National Carrier Contracts and Initiatives*  
*(703) 749-7338*



-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, February 21, 2007 10:55 AM  
**To:** McGolerick, Rick (Rick)  
**Subject:** FW: [Fwd: Brandenburg LNP Query]

-----Original Message-----

**From:** George Lewis [mailto:gtlewis@bbtel.com]  
**Sent:** Wednesday, February 21, 2007 8:14 AM  
**To:** Randall Bradley  
**Subject:** [Fwd: Brandenburg LNP Query]

----- Original Message -----

**Subject:** Brandenburg LNP Query  
**Date:** Thu, 15 Feb 2007 12:24:44 -0500  
**From:** Williams, Steven G <Steven.G.Williams@windstream.com>  
**To:** <troynevitt@bbtel.com>, <gtlewis@bbtel.com>  
**CC:** Gilmer, Ted A <Ted.A.Gilmer@windstream.com>, Fuller, Anthony <Anthony.Fuller@windstream.com>

During a four day audit of traffic in the Elizabeth office, we discovered that Brandenburg Telephone is sending thousands of calls over its ICO trunk groups for calls that do not terminate to Windstream.

7/31/2008

This is mainly due to the fact that Brandenburg Telephone is not completing LNP queries. Your CLEC originated traffic appears to have already completed the LNP query.

Windstream's Elizabethtown end office completed approximately 12,000 LNP queries, and transited over 866,528 MOU (Minutes Of Use) for calls originated from Brandenburg Telephone.

Since the traffic is intraLATA and your switch is capable, Brandenburg Telephone must complete its own LNP dips, and as the industry standard, route the call based on the LRN.

Brandenburg Telephone needs to complete this work before Friday, February 23, 2007. On Monday, February 26, Windstream will implement the necessary translations changes on the Brandenburg Telephone trunk groups to correct this problem and allow only traffic that has completed the LNP query to terminating to the Windstream Elizabethtown office.

Please contact me if you would like to discuss.

Thanks,  
Steven Williams  
Staff Manager - Translations Engineering  
Windstream Communication  
704-845-7258  
[steven.g.williams@windstream.com](mailto:steven.g.williams@windstream.com)



\*\*\*\*\*

The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, Windstream requests that you immediately notify the sender and advise that you do not read the message or attachments, and that you delete them without copying or sending them to anyone else.

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Monday, March 13, 2006 10:43 AM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Brandenburg EAS Agreement

I've talked with Allison and Friday morning of this week or Monday morning next week works with us. How does those dates work with you. I need to clear this with Steve W. but he will not be available until late today. Let me know today if these may work for you and then I'll get with Steve W. later today or in the morning.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Monday, March 13, 2006 9:17 AM  
**To:** 'Randall Bradley'  
**Subject:** RE: Brandenburg EAS Agreement

Randall – Tomorrow is out now, I need to have a couple of free days and times so we can coordinate.

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Saturday, March 11, 2006 10:43 AM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Brandenburg EAS Agreement

We'll shoot for 1:00 on Tuesday. I'll let everyone know on my end and confirm back to you.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Saturday, March 11, 2006 10:00 AM  
**To:** 'Randall Bradley'  
**Cc:** John Monroe  
**Subject:** RE: Brandenburg EAS Agreement

Randall – We are only available from 1-2PM EST due to the late notice. If this does not work I would suggest that you give me several days/times so we can coordinate everyone's availability.

Thanks.

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Friday, March 10, 2006 4:09 PM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Brandenburg EAS Agreement

Tuesday afternoon between 2:00 or 3:00 EST would work better for us. Please let me know if this will work and I will finalize the plans.  
Randall

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Thursday, March 09, 2006 9:08 AM  
**To:** 'Randall Bradley'  
**Cc:** John Monroe  
**Subject:** RE: Brandenburg EAS Agreement

Randall – I need to know what day and time.

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, March 01, 2006 2:35 PM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Brandenburg EAS Agreement

We probably won't know for sure for a couple of days but we will let you know as soon as we know.

-----Original Message-----

**From:** Rick McGolerick  
[mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Tuesday, February 28, 2006 3:03 PM  
**To:** 'Randall Bradley'  
**Subject:** RE: Brandenburg EAS Agreement

Please let me know ASAP so we can mark on our calendars.

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Tuesday, February 28, 2006 8:25 AM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Brandenburg EAS Agreement

We have received your email and all of the attachments. We are not available this week or next. We will be available either Monday or Tuesday the March 13<sup>th</sup> or 14<sup>th</sup>. We have a conflict one of these days and are waiting for this conflict to be scheduled. If you could block out times for both days, and then I'll confirm which day we will be able to meet.

Thanks,  
Randall

-----Original Message-----

**From:** Rick McGolerick  
[mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, February 24, 2006 10:16 AM  
**To:** 'Randall Bradley'; 'Rick McGolerick'  
**Cc:** 'Steven Watkins'; John Monroe; Lee M Olson  
**Subject:** Brandenburg EAS Agreement  
**Importance:** High

Randall – Please see MCI's redlined version of the agreement. At this point we need to have a call to go over each area to discuss issues that exist. I have also included a diagram that will need to be included in Exhibit 1.

We are available Mon/Tues and Thurs/Fri (AM) of next week.

Please let me know what day and time work for you.

Thanks.

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**From:** Randall Bradley [mailto:rbradley@bbtel.com]

**Sent:** Thursday, February 09, 2006 2:22 PM

**To:** 'Rick McGlerick'

**Cc:** 'Steven Watkins'

**Subject:**

Rick,

Attached is the revised Exhibits based on our conference call. We have added all the nxx's in question and also revised the exhibit to state that MCI will bring the trunks into our Radcliff CO. Thanks.

Randall



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Thanks.

Randall



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**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, February 16, 2006 10:41 AM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Tandem

We did allow a CMRS carrier and maybe two CMRS carriers to subtend our tandem temporarily. This example is probably one of them. I'm not sure how long we allowed the carrier to continue this arrangement. I hope this answers your question.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolesrick@verizonbusiness.com]  
**Sent:** Thursday, February 16, 2006 10:16 AM  
**To:** 'Randall Bradley'  
**Subject:** RE: Tandem

The LERG has the following listed: American Cellular Corp, OCN 4116

LATA	NPA	NXX	BLOCK ID	AOCN	OCN	RC ABBRE	RC LATA	SWITCH	H-TRM D TDM	H-TRM LOCAL TDM	F I I
462	270	501	A	6677	4116	VINE GROVE	462	RDCLKYAJ1MD	RDCLKYXA1GT		

Is the LERG incorrrect?

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, February 16, 2006 8:10 AM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Tandem

We don't have any companies that subtend our tandem. If you need any additional information, please let me know.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolesrick@verizonbusiness.com]  
**Sent:** Wednesday, February 15, 2006 10:22 AM  
**To:** 'Randall Bradley'  
**Subject:** Tandem

Randall – Can you please confirm who (if any) companies subtend your tandem where we plan to establish our POI? Thanks

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, February 09, 2006 2:22 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Steven Watkins'  
**Subject:**

Rick,

Attached is the revised Exhibits based on our conference call. We have added all the nxx's in question and also revised the exhibit to state that MCI will bring the trunks into our Radcliff CO. Thanks.

Randall

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Randall

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Friday, February 23, 2007 11:00 AM  
**To:** 'McGolerick, Rick (Rick)'  
**Cc:** 'Steven Watkins'  
**Subject:** eas agreement

Rick,

Thanks for the diagram you sent Wednesday afternoon. Attached is the agreement that we've redlined that should incorporate our previous discussions. If you have any questions, please give me a call.

Thanks,

Randall  
270-422-2121

AGREEMENT

for the

TRANSPORT AND TERMINATION OF  
EXTENDED AREA SERVICE (EAS) TRAFFIC

Effective as of \_\_\_\_\_, 20\_\_

Between

Brandenburg Telephone Company, Inc.

and

MCI

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AGREEMENT  
for the  
TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE (EAS) TRAFFIC

This AGREEMENT FOR THE TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE ("EAS") TRAFFIC ("Agreement") by and between Brandenburg Telephone Company, Inc. ("Brandenburg"), a Kentucky corporation with offices at 200 Telco Drive, Brandenburg, Kentucky 40108 and MCI metro Access Transmission Services L.L.C ("MCI"), a Delaware limited liability company with offices at 22001 Loudoun County Parkway, Ashburn, VA 20147. This Agreement may refer to either Brandenburg or MCI as a "Party" or to both Brandenburg and MCI as the "Parties."

RECITALS

WHEREAS, Brandenburg and MCI are local exchange carriers authorized to provide telecommunications services in the Commonwealth of Kentucky; and

WHEREAS, the Parties individually provide telecommunications services in specific exchange areas in the Commonwealth of Kentucky; and

WHEREAS, the Parties recognize that their respective end users may have Extended Area Service ("EAS") calling interests between certain separate communities; and

WHEREAS, the communities between which EAS calling may be provided are each separate and mutually exclusive geographic areas; and

WHEREAS, the Parties recognize that the ability to provide EAS calling to their respective customers is dependent on the establishment of connecting carrier facilities and appropriate terms and conditions between the Parties; and

WHEREAS, Brandenburg's service and network responsibilities cannot and do not extend beyond Brandenburg's incumbent LEC service area; and

WHEREAS, the Parties desire to interconnect their respective networks to allow either Party to deliver specific EAS Traffic to the other Party for transport and termination on the other Party's network;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Brandenburg and MCI hereby agree as follows:

This Agreement sets forth the terms, conditions, and compensation between the Parties for the establishment of connecting facilities and for transport and termination of EAS Traffic delivered by one Party to the other Party.

**1.0 DEFINITIONS**

If used in this Agreement, the following terms have the meanings specified below in this Section 1.0.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or controlled by, or is under common ownership or control with, a Party to this Agreement.

1.3 "Commission" means the Kentucky Public Service Commission.

1.4 "Common Channel Interoffice Signaling" or "CCIS" or "Common Channel Signaling System 7" ("CCS") mean the signaling system, developed for use between switching systems with stored-program control, for transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data traffic of the call. "SS7" means the common channel out of band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph ("CCITT") and the American National Standards Institute ("ANSI").

1.5 "Customer," "End User" or "End User Customer" means the residence or business subscriber that is the ultimate user of Telecommunications Services provided by either of the Parties and for purposes of this Agreement may place or receive EAS calls.

1.6 "Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

1.7 "Digital Signal Level 1" or "DS1" or "T1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

1.8 "Digital Signal Level 3" or "DS3" or "T3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

1.9 "Extended Area Service" or "EAS" is a service arrangement whereby End Users that obtain local exchange service in a specific Local Service Exchange Area are provided the ability to place interexchange calls to End Users that obtain local exchange service in another mutually exclusive specific Local Service Exchange Area on the basis of terms, conditions and charges that are distinct from the terms applicable to message toll service and exchange service. EAS is separate and distinct from exchange service that permits end users that obtain local exchange service in a specific Local Service Exchange Area to place calls to end users that obtain local exchange service in the same Local Service Exchange Area. EAS is separate and distinct from toll services that permit end users to place interexchange calls according to interexchange toll rates based on usage and/or distance-based charges. EAS calling is established to meet the public interest demand of end users that reside and obtain local exchange service in specific communities to place calls to end users that reside and obtain local exchange service in other specific communities without incurring specific telephone message toll charges. For purposes of this Agreement, EAS includes traffic between the specific Local Service Exchange Areas as set forth in Exhibit 1 to this Agreement. For purposes of this Agreement, a call originated by or terminated to a Customer that obtains from one Party Foreign Exchange Service as defined in this Agreement shall be treated as EAS based on whether the Foreign Exchange Area is within the EAS calling scope as defined in this section.

1.10 "EAS Traffic" means two way traffic that falls within the definition of "EAS" that is exchanged between the Parties.

1.11 "Information Service" is as defined in the Communications Act of 1934, as amended.

1.12 "Information Service Provider" or "ISP" is any entity, including but not limited to an



Internet service provider, that provides information services.

1.13 "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP. ISP Traffic is not EAS Traffic as defined in this Agreement.

1.14 "Local Exchange Carrier" or "LEC" is any common carrier authorized to provide local exchange and exchange access services.

1.15 "Local Service Exchange Area" is a specific geographic service area encompassing an exchange area served by a Party as set forth in Exhibit 1 to this Agreement. The Local Service Exchange Areas define the mutually exclusive geographic areas between which the Parties exchange EAS pursuant to this Agreement.

1.16 "NXX Code" means a ten thousand (10,000) block of numbers which has the same initial three (3) digit prefix with a seven digit dialing sequence which is assigned to a LEC for the provision of its local exchange service.

1.17 "Point of Connection" or "POC" means the mutually agreed upon point of demarcation, within the incumbent service area of Brandenburg, where the Parties connect their networks for the exchange of EAS Traffic. Each Party shall be financially responsible for the costs of the facilities on its respective side of the POC.

1.18 "Rate Center" means the specific geographic point ("Vertical and Horizontal" ("V&H") coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure distance-sensitive end user traffic to/from the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified as the area within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center.

1.19 "Tariff" means any applicable federal or state tariff of a Party that sets forth the generally available terms and conditions under which a Party offers a particular service, facility, or arrangement.

1.20 "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received.

1.21 "Termination" is, with respect to EAS Traffic pursuant to this Agreement, the switching of EAS Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

1.22 "Transport" is, with respect to EAS Traffic pursuant to this Agreement, the transmission from the POC to the terminating carrier's end office switch that serves the called party.

1.23 "Foreign Exchange Service" is a tariffed local exchange service whereby a Customer who is located in one Rate Center Area ("Home Exchange Area") obtains local exchange service in a different Rate Center Area ("Foreign Exchange Area"). Tariffed Foreign Exchange Service provides the Customer with a private line interexchange circuit from the Customer's Home Exchange Area location to the Customer's Foreign Exchange Area and local

exchange service in the Foreign Exchange Area. The Customer is assigned a telephone number associated with the Foreign Exchange Area. A Customer's Home Exchange Area and Foreign Exchange Area must be both within the same LATA and within the Commonwealth of Kentucky.

## 2.0 INTERPRETATION AND CONSTRUCTION

2.1 All references to Sections, Exhibits and Schedules are deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including offerings, guides or practices of Brandenburg, MCI or other third party), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, or rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

2.2 The Parties acknowledge that some of the services, facilities, or arrangements described herein reference the terms of federal or state Tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement for the exchange of EAS Traffic. If any provision contained in this main body of the Agreement and any Exhibit hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement prevails. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this main body of this Agreement prevails.

## 3.0 EAS TRAFFIC

### 3.1 SCOPE OF TRAFFIC COVERED BY THIS AGREEMENT

3.1.1 This Agreement sets forth the terms and conditions under which the Parties agree to Transport and Terminate certain EAS Traffic delivered by one Party to the other Party at the POC. This Agreement only applies to the delivery of EAS Traffic between an End User of one Party and an End User of the other Party. The specific Local Service Exchange Areas that are the subject of this Agreement between which customers of the Parties may be provided EAS calling service(s), together with the identification and location of associated end offices and location(s) of Point(s) of Connection, are set forth in Exhibit 1 to this Agreement.

3.1.2 This Agreement only applies to the specific Local Service Exchange Areas specified in Exhibit 1. From time to time, the Parties can negotiate the exchange of EAS Traffic between additional pairs of Local Service Exchange Areas, but this Agreement does not require the Parties to negotiate any changes. Without agreement by both Parties to such changes, the specific Local Service Exchange Areas set forth in Exhibit 1 and the combination(s) of Local Service Exchange Areas that determines EAS calling as also set forth in Exhibit 1 will not change. It will constitute a default of this Agreement for a Party to deliver, over the connecting network facilities, any traffic other than the traffic that is within the scope of this Agreement as specifically identified in this Section 3.

3.1.3 Each Party agrees that it will not provision any of its services in a manner that will result in, or permits, the circumvention of the application of intrastate or interstate access charges by the other Party. Neither party shall bridge including, but not limited to, the resale or bridging of EAS service beyond the two specified Local Service Exchange Areas between which EAS is provided or the assignment of NPA-NXX numbers

associated with one Rate Center for End Users that obtain local exchange service in a different Rate Center, except that where a Customer obtains Foreign Exchange Service as defined in this Agreement, the Customer will be assigned a NPA-NXX associated with the Foreign Exchange Area and the Customer will be deemed to be obtaining local exchange service in the Foreign Exchange Area.

3.1.4 Both Parties warrant and represent that they will: (a) assign telephone numbers in a manner consistent with this Agreement to End Users that obtain local exchange service in the Rate Center associated with the telephone number, including, where a Customer obtains Foreign Exchange Service as defined in this Agreement, the Customer will be assigned a telephone number associated with the Foreign Exchange Area; (b) provision their local exchange carrier services in a manner that the resulting traffic exchanged between the Parties pursuant to this Agreement will be confined to the scope of the traffic as set forth in this Section; (c) adopt the Rate Center areas and Rate Center points that are identical to those used by the incumbent local exchange carriers that serve the Local Service Exchange Areas related to the EAS Traffic pursuant to this Agreement; (d) will assign whole NXX Codes to each Rate Center, or where, applicable, thousand number blocks within a NXX Code assigned to that Rate Center, and (e) subject to Sections 3.1.4.1., 3.1.4.2., and 3.1.4.3, provide Calling Party Number, where available, on all EAS-Traffic delivered to the other Party. Both Parties agree that they will engineer their respective networks and design their respective systems to deliver traffic in compliance with this Section 3. If either Party violates Section 3.1.2, 3.1.3, above, or this Section 3.1.4, the other Party shall be entitled to charge originating and terminating access charges, as appropriate, for traffic associated with such violations.

3.1.4.1 Each Party shall pass Calling Party Number (CPN) information on each call. For those Customer's whose premise equipment is unable to populate the CPN in the call detail record, each party shall populate the CPN field with the Customer's billing number. The parties agree that they will not populate the CPN field in the call detail record with a wholesale Customer's billing or local routing number but will utilize the final Customer's CPN or billing number.

3.1.4.2 Where possible, actual call detail records including the CPN, will be used by the terminating Party for purposes of auditing the scope of traffic. Where a terminating Party has the capability, it will use the actual call detail records including the CPN information associated with each specific call to identify traffic delivered by the other Party.

3.1.4.3 When a terminating Party receives insufficient call detail or the CPN is missing or masked, and therefore cannot determine whether the call is or is not within the scope of this Agreement, and if the percentage of traffic delivered with CPN of sufficient detail is greater than ninety-five percent (95%) of the total calls delivered, the calls without sufficient detail or CPN will be presumed to be in the same proportion as the calls within the more than ninety-five percent (95%) that can be identified. If traffic delivered by one Party to the other Party has CPN on fewer than ninety-five percent (95%) of the calls, the terminating Party may provide written notice of a billing dispute to the other Party delivering such calls below the ninety-five percent (95%) threshold. Upon such notice, the Party delivering the traffic to the other Party (the "Delivering Party") shall have thirty (30) days to investigate and correct the lack of CPN and report the date the problem was corrected to the other Party (the "Terminating Party"). If the problem cannot be repaired within thirty (30) days of the written notice to bring the delivered traffic without CPN to fewer than five percent (5%) of total calls, the Terminating Party will bill all traffic without CPN as intrastate Access traffic until such time as the traffic without CPN is fewer than five percent (5%) of total traffic.

3.1.5 If a Party violates (the "Violating Party") any of the terms, warranties or representations provided for in this Section 3.0 (a "Violation"), and if the other Party (the "Non-

Violating Party") provides written notification to the Violating Party of a suspected Violation(s), or if the Violating Party discovers the Violation(s) itself, the Violating Party will, unless otherwise mutually agreed to by the Parties, within five (15) days following such notification or discovery, correct and/or remove the specific service arrangement that has resulted in the Violation(s). In addition, the Non-Violating Party may request a study or other such demonstration of available switch data or other information that the Violation(s) has been corrected and/or removed. It will constitute a default of this Agreement if a Party does not correct and/or remove the Violation after notification or discovery. It will constitute a default of this Agreement for repeated Violations.

### 3.2 EXCLUDED TRAFFIC

This Agreement does not cover any traffic originating or terminating in areas other than the Local Service Exchange Areas set forth in Exhibit 1. This Agreement does not apply to any traffic that both originates and terminates within the same Local Service Exchange Area. Except as provided in Section 3.4, below, the terms and conditions of this Agreement are not applicable to IntraLATA toll traffic; switched access traffic; InterLATA toll traffic; or any other traffic that is not specifically identified in Section 3 as subject to this Agreement. ~~Except as provided in Section 3.3 below, this Agreement is not applicable to traffic originated, terminated, or carried on third party networks not Parties to this Agreement or any traffic originated or terminated by users of Commercial Mobile Radio Services licensees. Local Internet Traffic shall be treated pursuant to the terms of Section 3.5. Subject to the provisions of Subsection 3.5 below, the Parties specifically exclude traffic terminating to Internet Service Providers, traffic terminating to other information service providers, and any traffic associated with ISP services. The Parties specifically exclude verification traffic and 911 traffic.~~

### 3.3 INTERMEDIARY EAS TRAFFIC FUNCTIONS

Neither Party will provide an intermediary function for the other Party's connection of its end users to the end users of a third party telecommunications carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary function.

### 3.4 ACCESS TRAFFIC "Section Intentionally Omitted"

### 3.5 TREATMENT OF LOCAL INTERNET INFORMATION SERVICE PROVIDER TRAFFIC

3.5.1 The Parties recognize that the network treatment of traffic directed to ISPs is unresolved and the subject of industry wide controversy. The Parties further recognize that the long term resolution of issues related to ISP Traffic will affect both Parties and will likely necessitate modification to this Agreement. In recognition of these factors, the Parties agree to transport and switch ISP Traffic in the manner described below in this Subsection 3.5 subject to amendment upon written agreement of the Parties.

3.5.2 The Parties acknowledge that under current network and service arrangements, some ISP Traffic may be switched and transported as if this ISP Traffic were actual EAS Traffic. The Parties may treat Local Internet ISP Traffic under these conditions until such time as a regulatory authority, court, or legislative body addresses the proper treatment of this traffic. The switching and transport of Local Internet ISP Traffic over EAS facilities by either Party, however, will not be construed as either agreement or acknowledgment by the Parties that this arrangement is proper or required. In the event that the manner in which any ISP Traffic is or may be treated is determined by an appropriate regulatory or legal body, or in the event that any action or decision of an appropriate regulatory or legal body results in a determination that the interim treatment of Local Internet ISP Traffic pursuant to this Subsection is unlawful or improper, the Parties will negotiate in good faith immediate modification and/or replacement language to this Agreement to effect new terms and conditions consistent with any such lawful action or determination. Any new or modified terms will be effective with the effective date of any such lawful action or determination regarding the treatment of Local Internet ISP Traffic between the Parties.

3.5.3 The compensation terms in this Section 3.5 are applicable solely under the condition that MCI establishes a POC with Brandenburg's Radcliff Tandem office for purposes of the exchange of traffic within the scope of this agreement. The Parties agree that the mutual provisions and relative obligations pursuant to this Section 3.5, including the compensation provisions set forth in Section 3.5.4, represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and ~~except for the compensation pursuant to Section 3.5.4, and~~ neither Party will owe a net due amount to the other Party for terminating Local Internet ISP Traffic.

3.5.4 Notwithstanding any other provision of this Agreement that would otherwise apply to EAS Traffic that is not ISP Traffic, the Parties agree to the following terms and conditions with respect to this Agreement and Local Internet ISP Traffic: (1) each Party is financially responsible for any and all trunking facilities on its side of the POC as described and shown in Exhibit 1 to the extent not offset by equal exchange of ISP Traffic, the Party with which an ISP is connected ("ISP Serving Party") will be responsible for providing compensation to the other Party for the cost of additional trunking facilities provided by the other Party to originate calls to ISPs connected to the ISP Serving Party, and (2) neither Party will be required to build or incur costs for any trunking facilities beyond its side of the POC as described and shown in Exhibit 1, if one Party decides to provide services solely to ISPs, then the Party with which the ISPs are connected ("ISP Serving Party") will provide compensation to the other Party for any and all trunking facilities that the other Party may install to originate traffic to the ISPs connected to the ISP Serving Party.

3.5.5 ~~At the request of one Party, the other Party will cooperate fully in identifying ISPs and ISP Traffic exchanged between the Parties.~~

### 3.6 TRUNK GROUPS

**3.6.1** The Parties agree to interconnect their respective networks for the purpose of allowing each Party to deliver EAS Traffic to the other Party. The Parties agree to establish the Point(s) of Connection as set forth in Exhibit 1. Each Party will make available to the other Party, at the POC(s), trunks over which the originating Party can terminate EAS Traffic to the End Users of the terminating Party.

**3.6.2** The Parties agree to work cooperatively to forecast trunk requirements for the exchange of EAS Traffic between the respective End Users of the Parties. The Parties agree to connect trunks at a minimum DS1. Where EAS Traffic volumes are not established, trunk groups will be provisioned initially based on forecasts jointly developed by the Parties. The Parties may decide to provision one-way or two-way trunking arrangements.

**3.6.3** Each Party is individually responsible for the provision and maintenance of facilities within its network to the POC as identified and shown in Exhibit 1 which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in a mutually acceptable format and in a manner that neither destroys nor degrades the normal quality of service each Party provides to its respective end users.

### **3.7 SIGNALING**

Both Parties agree to exchange SS7 Common Channel Signaling ("CCS") between their respective networks where technically feasible for EAS calls exchanged pursuant to this Agreement. Both Parties will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. The Parties agree to cooperate on the exchange of all appropriate CCS messages for EAS call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. All CCS signaling parameters will be provided in conjunction with EAS Traffic where available with specific trunk connections.

### **3.8 NETWORK MAINTENANCE AND TRUNK PROVISIONING**

The Parties will work cooperatively to install and maintain a reliable network for the provision of EAS calling between the Parties' respective end users. The Parties will exchange relevant information to maintain reliability. The Parties agree to work cooperatively to forecast trunk requirements.

### **3.9 NO COMPENSATION**

Except as provided in Section 3.1, the Parties agree that the mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that neither Party has any obligation to provide any monetary compensation to the other Party for the other Party's origination or termination of EAS Traffic within the scope of this Agreement. The specific compensation terms and conditions set forth in this Agreement are related to, dependent on, and limited to the provision of local exchange service to end users located in the specific geographic areas set forth in Exhibit 1, the exchange of EAS Traffic between the Parties with respect to these geographic areas, the establishment of the POC as set forth in Exhibit 1, and all other terms and conditions set forth in this Agreement.

### **4.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY

MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

#### **5.0 NO CANCELLATION OR NON-RECURRING CHARGES**

No cancellation charges will apply with respect to any of the terms of this Agreement. No non-recurring charges will apply with respect to any of the terms of this Agreement.

#### **6.0 INDEMNIFICATION**

**6.1** Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 6.0 will affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws for the indemnified Party's provision of said services.

**6.2** The indemnification provided herein is conditioned upon:

- (a) Prompt notice by the indemnified Party to the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
- (b) Sole authority by the indemnifying Party to defend any such action, including the selection of legal counsel. However, the indemnified Party may engage separate legal counsel at its sole cost and expense.
- (c) Prior written consent of the indemnified Party, which consent will not be unreasonably withheld before the indemnifying Party settles or consents to any judgment pertaining to the action.
- (d) The indemnified Party's assertion of any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
- (e) Reasonable cooperation and assistance in the defense of any such action by the indemnified Party.

**6.3** In addition to its indemnity obligations under Sections 6.1 and 6.2, each Party will provide, in its Tariffs that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any Consequential Damages (as defined in subsection 7.2, below).

## 7.0 LIMITATION OF LIABILITY

7.1 Except in the instance of harm resulting from an intentional or grossly negligent action of one Party, the Parties agree to limit liability in accordance with this Section 7. The liability of either Party to the other Party for damages arising out of failure to comply with a direction to install, restore or terminate facilities; or out of failures, mistakes, omissions, interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder will be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability will not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount will be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section 7.1 may be zero.

7.2 Neither Party will be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing will not limit a Party's obligation under Section 6.

7.3 The Parties agree that neither Party will be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement is deemed to create a third party beneficiary relationship between the Party providing the service and the customers of the Party purchasing the service. In the event of a dispute involving both Parties with a customer of one Party, both Parties will assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable Tariff(s).

## 8.0 TERM AND TERMINATION

This Agreement is effective on the date on which this Agreement is approved by the Commission and continues in force and effect unless and until terminated as provided herein. Either Party may terminate this Agreement by providing written notice of termination to the other Party, such written notice to be provided at least eighty (80) days in advance of the date of termination.

## 9.0 COMPLIANCE WITH LAWS AND REGULATIONS

9.1 Each Party will comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party will promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

9.2 Notwithstanding the mutual commitment contained in this Agreement, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related specifically to this Agreement or other types of



arrangements prescribed in this Agreement. If the Commission rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

9.3 The Parties agree that it is in their mutual interest to seek approval of this Agreement, and the Parties will voluntarily file this Agreement with the Commission. The filing of this Agreement does not create obligations for either Party under the Act that do not otherwise apply.

## 10.0 SEVERABILITY

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement remains in full force and effect and is not affected unless removal of that provision results in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties will negotiate in good faith for replacement language that does not materially alter the economic effect of this Agreement on either Party. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party in accordance with Section 8.0.

## 11.0 MISCELLANEOUS

### 11.1 AUTHORIZATION

11.1.1 Brandenburg is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

11.1.2 MCI is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

### 11.2 DISCLAIMER OF AGENCY; NO THIRD PARTY BENEFICIARIES; INDEPENDENT CONTRACTOR

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, creates an agency or joint venture relationship between the Parties, or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, creates an agency, or any other type of relationship or third party liability between the Parties or between a Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, creates or may be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement makes a Party a legal representative or agent of the other Party, nor does a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, nothing contained herein requires a Party to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

### 11.3 FORCE MAJEURE

Neither Party is responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions, fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation, strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the affected Party, upon giving prompt notice to the other Party, is excused from such performance on a day-to-day basis, and the other Party is likewise excused from performance of its obligations on a day-to-day basis, to the extent such inference relates to the Party's performance obligations. The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance, and both Parties will proceed to perform with dispatch once the cause(s) are removed or cease.

#### **11.4 TREATMENT OF PROPRIETARY AND CONFIDENTIAL INFORMATION**

**11.4.1** Both Parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Proprietary Information"). Proprietary Information remains the property of the disclosing Party. Both Parties agree that all Information must be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both Parties agree that the Information may be utilized by the non-disclosing Party only to the extent necessary to fulfill the terms of this Agreement or upon such terms and conditions as may be agreed upon between the Parties in writing, and for no other purpose. Both Parties agree to receive such Proprietary Information and not to disclose such Information. Both Parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees and duly authorized agents of the Parties with a need to know such Information and which employees and agents agree to be bound by the terms of this Section. Both Parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

**11.4.2** Notwithstanding the foregoing, both Parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a non-party to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; 3) publicly known through no wrongful act of the receiving Party; 4) previously known to the receiving Party without an obligation to keep it confidential; 5) required to be disclosed by any governmental authority or applicable law; or 6) approved for release by written authorization of the disclosing Party.

#### **11.5 CHOICE OF LAW**

The construction, interpretation, enforcement and performance of this Agreement will be in accordance with the laws of the Commonwealth of Kentucky without regard to its conflict of laws principles.

#### **11.6 TAXES**

**11.6.1** It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a

result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provisions will apply.

### **11.6.2 Definitions**

**11.6.2.1** For purposes of this Subsection 11.6, the terms "taxes" and "fees" include but are not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments thereof, excluding any taxes levied on income.

**11.6.2.2** The term "Providing Party" means the Party whose rates apply to the transaction. The term "Purchasing Party" means the Party responsible for payment of compensation under this agreement with respect to a transaction. The term "Selling Party" has the same meaning as Providing Party.

### **11.6.3 Taxes and Fees Imposed Directly On Either Seller or Purchaser.**

**11.6.3.1** Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, will be borne and paid by the providing Party.

**11.6.3.2** Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, will be borne and paid by the purchasing Party.

### **11.6.4 Taxes and Fees Imposed on Purchaser But Collected And Remitted By Seller.**

**11.6.4.1** Taxes and fees imposed on the purchasing Party will be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

**11.6.4.2** To the extent permitted by applicable law, any such taxes and/or fees will be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party remains liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

**11.6.4.3** If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party will not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefore, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party must promptly furnish the providing Party with copies of all filings in any

proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

**11.6.4.4** In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party is responsible for such payment and is entitled to the benefit of any refund or recovery.

**11.6.4.5** If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party must pay such additional amount, including any interest and penalties thereon.

**11.6.4.6** Notwithstanding any provision to the contrary, the purchasing Party will, at its expense, protect, defend, indemnify and hold the providing Party harmless from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses, including reasonable attorney fees, with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

**11.6.4.7** Each Party must notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### **11.6.5 Taxes and Fees Imposed on Seller But Passed On To Purchaser.**

**11.6.5.1** Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, will be borne by the purchasing Party.

**11.6.5.2** To the extent permitted by applicable law, any such taxes and/or fees will be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party will remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

**11.6.5.3** If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties will consult with respect to the imposition and billing of such tax or fee, the Parties will consult with respect to the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party will retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party will abide by such determination and pay such taxes or fees to the providing Party. The providing Party will further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party will be at the purchasing Party's expense.

**11.6.5.4** In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party will be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

**11.6.5.5** If it is ultimately determined that any additional amount of such a

tax or fee is due to the imposing authority, the purchasing Party will pay such additional amount, including any interest and penalties thereon.

**11.6.5.6** Notwithstanding any provision to the contrary, the purchasing Party will protect indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

**11.6.5.7** Each Party will notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### **11.6.6 Mutual Cooperation.**

In any contest of a tax or fee by one Party, the other Party will cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party will be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

### **11.7 BILLING AND PAYMENT; DISPUTED AMOUNTS**

**11.7.1** Because of the mutual benefits related to the subject matter of this Agreement, except for charges that may arise pursuant to ~~Subsection 3.4 and 3.5.5 or as may be set forth in Exhibit 2~~ Section 3.1, the Parties agree that no charges will apply to the exchange of traffic pursuant to the terms of this Agreement. In the event that charges are applicable pursuant to this Agreement except for charges that may arise pursuant to Section 3.1, the following terms and conditions set forth in this Section 11.7 apply.

**11.7.2** The charges for any arrangement under this Agreement are to be billed monthly and payable, in immediately available U.S. funds, within thirty (30) days of the date of the bill.

**11.7.3** Although it is the intent of both Parties to submit timely and accurate statements of charges, failure by either Party to present statements to the other Party in a timely manner does not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party is not entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely fashion.

**11.7.4** If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") will notify the Billing Party of the amount it disputes ("Disputed Amount") within thirty (30) days of its receipt of the invoice containing such disputed amount and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party must pay the Billing Party all undisputed amounts when due.

**11.7.5** If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties will appoint a designated representative

that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives will meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives. However, all reasonable requests for relevant information made by one Party to the other Party must be honored.

**11.7.6** If the Parties are unable to resolve issues related to the Disputed Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to subsection 11.7.5, then either Party may proceed under the dispute resolution provisions of Section 11.8.

**11.7.7** The Parties agree that all negotiations pursuant to this subsection 11.7 will remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

**11.7.8** Any undisputed amounts not paid when due will accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

## **11.8 DISPUTE RESOLUTION**

Any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms must be addressed in the first instance by good faith negotiation between the Parties. Should such negotiations fail to resolve the dispute within thirty (30) days, either Party may initiate an appropriate action in a regulatory or judicial forum of competent jurisdiction.

## **11.9 NOTICES**

Notices given by one Party to the other Party under this Agreement must be in writing and (i) delivered personally, (ii) delivered by express delivery service, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

To: Brandenburg Telephone Company, Inc.  
Allison T. Willoughby  
200 Telco Dr.  
PO Box 599  
Brandenburg, KY 40108

And

Randall Bradley  
200 Telco Dr.  
PO Box 599  
Brandenburg, KY 40108

To: MCI

And

MCI

or to such other address as either Party may designate by proper notice. Notices will be deemed given as of (i) the next business day when notice is sent via express delivery service or personal delivery, or (ii) three (3) days after mailing in the case of first class or certified U.S. mail.

#### **11.10 JOINT WORK PRODUCT**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and will be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences will be drawn against either Party.

#### **11.11 NO LICENSE**

**11.11.1** Nothing in this Agreement may be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

**11.11.2** Neither Party has any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, will offer the other reasonable cooperation and assistance in the defense of any such claim.

**11.11.3** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

#### **11.12 SURVIVAL**

The Parties' obligations under this Agreement which by their nature are intended to continue beyond the termination or expiration of this Agreement survive the termination or expiration of this Agreement.

### **11.13 PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS**

Neither Party nor its subcontractors or agents may use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

### **11.14 NON-WAIVER**

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder may not be construed as a continuing or future waiver of such term, condition, right or privilege. The Parties recognize that Brandenburg is a Rural Telephone Company and is entitled to all rights afforded Rural Telephone Companies under the Act including, but not limited to, the rights afforded Brandenburg under 47 USC § 251(f).

### **11.15 ENTIRE AGREEMENT**

This Agreement and any Exhibits, Schedules, or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party is bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

### **11.16 COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which together shall constitute one and the same instrument.



**11.17 MODIFICATION, AMENDMENT, SUPPLEMENT, OR WAIVER**

No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this \_\_\_\_ day of \_\_\_\_\_, 2005.

Brandenburg Telephone Company, Inc.

MCI

By \_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**BRANDENBURG TELEPHONE COMPANY**

200 Telco Drive  
PO Box 599  
Brandenburg, KY 40108  
270-422-2121

February 21, 2007

MCI Metro  
Attn: Mr. Rick McGolerick

Via e-mail

Dear Mr. McGolerick:

Brandenburg Telephone Company (Brandenburg) has been inadvertently sending traffic to the MCI Metro over the Brandenburg – Windstream trunk group. Windstream has notified Brandenburg that this traffic no longer will be accepted on this trunk group as of February 26, 2007. After February 26, 2007, the only arrangement Brandenburg's customers have to reach your customers is by making long distance calls. In order for this traffic to be local to Brandenburg end users, the MCI Metro and Brandenburg will need an EAS agreement which will stipulate the need for trunks between us. I have attached our standard EAS agreement.

If you have any questions, please give me a call.

Sincerely,

Randall Bradley  
Controller

RB;jh  
Attachment

EXHIBIT 1

Local Service Exchange Areas Between Which Extended Area Service (EAS) Traffic  
Is To Be Exchanged Pursuant to this Agreement.

This Exhibit specifies the Local Service Exchange Areas and Extended Area Services covered pursuant to the AGREEMENT FOR THE TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE (EAS) TRAFFIC between Brandenburg Telephone Company, Inc. ("Brandenburg") and KY Telephone Co ("KTC") as follows:

I. Local Service Areas Covered by this Agreement:

1. The ABC Local Service Exchange Area is the geographic area covering the ABC exchange as operated by Brandenburg on January 1, 2003 ("ABC") with a V&H of V=xxxx and H=yyyy.
2. The XZY Local Service Exchange Area is the geographic area covering the XYZ exchange as operated by Brandenburg on January 1, 2003 ("XYZ") with a V&H of V=xxxx and H= yyyy.
3. The WindstreamArea Local Service Exchange Area is the geographic area covering the WindstreamArea exchange as operated by Windstream Communications, Inc. on January 1, 2003 ("WindstreamArea") with a V&H of V=xxxx and H=yyyy.

II. Extended Area Service Traffic Covered by this Agreement includes:

1. ABC-WindstreamArea EAS traffic includes calls that originate in ABC (from Brandenburg NPA-NXX of XXX-XXX) and terminate in Windstream Area (to KTC NPA-NXX of XXX-XXX) and calls that originate in BELLArea (from KTC NPA-NXX of XXX-XXX) and terminate in ABC (to Brandenburg NPA-NXX of XXX-XXX).
2. XYZ-WindstreamArea EAS traffic includes calls that originate in XYZ (from Brandenburg NPA-NXX of XXX-XXX) and terminate in WindstreamArea (to KTC NPA-NXX of XXX-XXX) and calls that originate in WindstreamArea (from KTC NPA-NXX of XXX-XXX) and terminate in XYZ (to Brandenburg NPA-NXX of XXX-XXX).

III. Designation of Points of Connection For the Delivery of EAS Traffic Pursuant to this Agreement:

THE PARTIES MUST REVISE THIS EXHIBIT I BY COMPLETING THIS SECTION III PRIOR TO THE EXCHANGE OF EAS TRAFFIC. THE PARTIES WILL COMPLETE THIS SECTION III AFTER THE PARTIES HAVE AGREED TO SPECIFIC TRUNKING ARRANGMENTS AND POINT(S) OF INTERCONNECTION.

1. For ABC-WindstreamArea EAS and XYZ-WindstreamArea EAS, the Parties agree to connect \_\_\_\_\_ using \_\_\_\_\_ by means of \_\_\_\_\_ at a meet-point located \_\_\_\_\_ in the \_\_\_\_\_ Exchange with V&H of \_\_\_\_\_.

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

Brandenburg Telephone Company

Kentucky Telephone Company

By \_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

Exhibit 2  
Schedule of Charges for the Exchange of Extended Area Service (EAS) Traffic  
Pursuant to this Agreement.

This Exhibit specifies the charges between the Parties pursuant to the AGREEMENT FOR THE EXCHANGE OF TWO-WAY EXTENDED AREA SERVICE (EAS) TRAFFIC between Brandenburg Telephone Company, Inc. ("Brandenburg") and Cinergy Communications Company ("CCC") as follows:

RESERVED FOR FUTURE USE

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

Brandenburg Telephone Company, Inc.

Cinergy Communications Company

By \_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

# AGREEMENT

for the

## TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE (EAS) TRAFFIC

Effective as of \_\_\_\_\_, 20\_\_

Between

Brandenburg Telephone Company, Inc.

and

KY Telephone Company

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AGREEMENT  
for the  
TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE (EAS) TRAFFIC

This AGREEMENT FOR THE TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE ("EAS") TRAFFIC ("Agreement") by and between Brandenburg Telephone Company, Inc. ("Brandenburg"), a Kentucky corporation with offices at \_\_\_\_\_ and Kentucky Telephone Co. ("KTC"), a Kentucky corporation with offices at 1515 Broadway, Paducah, Kentucky 42001 and 1419 W. Lloyd Expressway, Evansville, Indiana 47710. This Agreement may refer to either Brandenburg or KTC as a "Party" or to both Brandenburg and KTC as the "Parties."

RECITALS

WHEREAS, Brandenburg and KTC are local exchange carriers authorized to provide telecommunications services in the Commonwealth of Kentucky; and

WHEREAS, the Parties individually provide telecommunications services in specific exchange areas in the Commonwealth of Kentucky; and

WHEREAS, the Parties recognize that their respective end users may have Extended Area Service ("EAS") calling interests between certain separate communities; and

WHEREAS, the communities between which EAS calling may be provided are each separate and mutually exclusive geographic areas; and

WHEREAS, the Parties recognize that the ability to provide EAS calling to their respective customers is dependent on the establishment of connecting carrier facilities and appropriate terms and conditions between the Parties; and

WHEREAS, Brandenburg's service and network responsibilities cannot and do not extend beyond Brandenburg's incumbent LEC service area; and

WHEREAS, the Parties desire to interconnect their respective networks to allow either Party to deliver specific EAS Traffic to the other Party for transport and termination on the other Party's network;

NOW, THEREFORE, in consideration of the mutual provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Brandenburg and KTC hereby agree as follows:

This Agreement sets forth the terms, conditions, and compensation between the Parties for the establishment of connecting facilities and for transport and termination of EAS Traffic delivered by one Party to the other Party.

**1.0 DEFINITIONS**

If used in this Agreement, the following terms have the meanings specified below in this Section 1.0.

1.1 "Act" means the Communications Act of 1934, as amended.

1.2 "Affiliate" means a person that (directly or indirectly) owns or controls, is owned or



controlled by, or is under common ownership or control with, a Party to this Agreement.

**1.3** "Commission" means the Kentucky Public Service Commission.

**1.4** "Common Channel Interoffice Signaling" or "CCIS" or "Common Channel Signaling System 7" ("CCS") mean the signaling system, developed for use between switching systems with stored-program control, for transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data traffic of the call. "SS7" means the common channel out of band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph ("CCITT") and the American National Standards Institute ("ANSI").

**1.5** "Customer," "End User" or "End User Customer" means the residence or business subscriber that is the ultimate user of Telecommunications Services provided by either of the Parties and for purposes of this Agreement may place or receive EAS calls.

**1.6** "Digital Signal Level" means one of several transmission rates in the time-division multiplex hierarchy.

**1.7** "Digital Signal Level 1" or "DS1" or "T1" means the 1.544 Mbps first-level signal in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS1 is the initial level of multiplexing.

**1.8** "Digital Signal Level 3" or "DS3" or "T3" means the 44.736 Mbps third-level in the time-division multiplex hierarchy. In the time-division multiplexing hierarchy of the telephone network, DS3 is defined as the third level of multiplexing.

**1.9** "Extended Area Service" or "EAS" is a service arrangement whereby End Users that obtain local exchange service in a specific Local Service Exchange Area are provided the ability to place interexchange calls to End Users that obtain local exchange service in another mutually exclusive specific Local Service Exchange Area on the basis of terms, conditions and charges that are distinct from the terms applicable to message toll service and exchange service. EAS is separate and distinct from exchange service that permits end users that obtain local exchange service in a specific Local Service Exchange Area to place calls to end users that obtain local exchange service in the same Local Service Exchange Area. EAS is separate and distinct from toll services that permit end users to place interexchange calls according to interexchange toll rates based on usage and/or distance-based charges. EAS calling is established to meet the public interest demand of end users that reside and obtain local exchange service in specific communities to place calls to end users that reside and obtain local exchange service in other specific communities without incurring specific telephone message toll charges. For purposes of this Agreement, EAS includes traffic between the specific Local Service Exchange Areas as set forth in Exhibit 1 to this Agreement.

**1.10** "EAS Traffic" means two way traffic that falls within the definition of "EAS" that is exchanged between the Parties.

**1.11** "Information Service" is as defined in the Communications Act of 1934, as amended.

**1.12** "Information Service Provider" or "ISP" is any entity, including but not limited to an Internet service provider, that provides information services.

**1.13** "ISP Traffic" is traffic originated by an end user of one Party and delivered to the other Party for switching to an ISP. ISP Traffic is not EAS Traffic as defined in this Agreement.

**1.14** "Local Exchange Carrier" or "LEC" is any common carrier authorized to provide local exchange and exchange access services.

**1.15** "Local Service Exchange Area" is a specific geographic service area encompassing an exchange area served by a Party as set forth in Exhibit 1 to this Agreement. The Local Service Exchange Areas define the mutually exclusive geographic areas between which the Parties exchange EAS pursuant to this Agreement.

**1.16** "NXX Code" means a ten thousand (10,000) block of numbers which has the same initial three (3) digit prefix with a seven digit dialing sequence which is assigned to a LEC for the provision of its local exchange service.

**1.17** "Point of Connection" or "POC" means the mutually agreed upon point of demarcation, within the incumbent service area of Brandenburg, where the Parties connect their networks for the exchange of EAS Traffic.

**1.18** "Rate Center" means the specific geographic point ("Vertical and Horizontal" ("V&H") coordinates) and corresponding geographic area which are associated with one or more particular NPA-NXX codes which have been assigned to a LEC for its provision of basic exchange telecommunications services. The "rate center point" is the finite geographic point identified by a specific V&H coordinate, which is used to measure distance-sensitive end user traffic to/from the particular NPA-NXX designations associated with the specific Rate Center. The "rate center area" is the exclusive geographic area identified as the area within which the LEC provides basic exchange telecommunications service bearing the particular NPA-NXX designations associated with the specific Rate Center.

**1.19** "Tariff" means any applicable federal or state tariff of a Party that sets forth the generally available terms and conditions under which a Party offers a particular service, facility, or arrangement.

**1.20** "Telecommunications" means the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received.

**1.21** "Termination" is, with respect to EAS Traffic pursuant to this Agreement, the switching of EAS Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

**1.22** "Transport" is, with respect to EAS Traffic pursuant to this Agreement, the transmission from the POC to the terminating carrier's end office switch that serves the called party.

## **2.0 INTERPRETATION AND CONSTRUCTION**

**2.1** All references to Sections, Exhibits and Schedules are deemed to be references to Sections of, and Exhibits and Schedules to, this Agreement unless the context otherwise requires. The headings used in this Agreement are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of this Agreement. Unless the context shall otherwise require, any reference to any agreement, other instrument (including offerings, guides or practices of Brandenburg, KTC or other third party), statute, regulation, rule or tariff is to such agreement, instrument, statute, regulation, or rule or tariff as amended and supplemented from time to time (and, in the case of a statute, regulation, rule or tariff, to any successor provision).

**2.2** The Parties acknowledge that some of the services, facilities, or arrangements described herein reference the terms of federal or state Tariffs of the Parties. Each Party hereby incorporates by reference those provisions of any tariff that governs any terms specified in this Agreement for the exchange of EAS Traffic. If any provision contained in this main body of the Agreement and any Exhibit hereto cannot be reasonably construed or interpreted to avoid conflict, the provision contained in this main body of this Agreement prevails. If any provision of this Agreement and an applicable tariff cannot be reasonably construed or interpreted to avoid conflict, the Parties agree that the provision contained in this main body of this Agreement prevails.

### **3.0 EAS TRAFFIC**

#### **3.1 SCOPE OF TRAFFIC COVERED BY THIS AGREEMENT**

**3.1.1** This Agreement sets forth the terms and conditions under which the Parties agree to Transport and Terminate certain EAS Traffic delivered by one Party to the other Party at the POC. This Agreement only applies to the delivery of EAS Traffic between an End User of one Party and an End User of the other Party. The specific Local Service Exchange Areas that are the subject of this Agreement between which customers of the Parties may be provided EAS calling service(s), together with the identification and location of associated end offices and location(s) of Point(s) of Connection, are set forth in Exhibit 1 to this Agreement.

**3.1.2** This Agreement only applies to the specific Local Service Exchange Areas specified in Exhibit 1. From time to time, the Parties can negotiate the exchange of EAS Traffic between additional pairs of Local Service Exchange Areas, but this Agreement does not require the Parties to negotiate any changes. Without agreement by both Parties to such changes, the specific Local Service Exchange Areas set forth in Exhibit 1 and the combination(s) of Local Service Exchange Areas that determines EAS calling as also set forth in Exhibit 1 will not change. It will constitute a default of this Agreement for a Party to deliver, over the connecting network facilities, any traffic other than the traffic that is within the scope of this Agreement as specifically identified in this Section 3.

**3.1.3** Each Party agrees that it will not provision any of its services in a manner that will result in, or permits, the arbitrage and/or circumvention of the application of intrastate access charges by the other Party including, but not limited to, the resale or bridging of EAS service beyond the two specified Local Service Exchange Areas between which EAS is provided or the assignment of NPA-NXX numbers associated with one Rate Center for End Users that obtain local exchange service in a different Rate Center.

**3.1.4** Both Parties warrant and represent that they will: (a) assign telephone numbers in a manner consistent with this Agreement to End Users that obtain local exchange service in the Rate Center associated with the telephone number, (b) provision their local exchange carrier services in a manner that the resulting traffic exchanged between the Parties pursuant to this Agreement will be confined to the scope of the traffic as set forth in this Section; (c) adopt the Rate Center areas and Rate Center points that are identical to those used by the incumbent local exchange carriers that serve the Local Service Exchange Areas related to the EAS Traffic pursuant to this Agreement; (d) will assign whole NXX Codes to each Rate Center, or where, applicable, thousand number blocks within a NXX Code assigned to that Rate Center; and (e) provide Calling Party Number on all EAS Traffic delivered to the other Party. Both Parties agree that they will engineer their respective networks and design their respective systems to deliver traffic in compliance with this Section 3.

**3.1.5** If a Party violates (the "Violating Party") any of the terms, warranties or

representations provided for in this Section 3.0 (a "Violation"), and if the other Party (the "Non-Violating Party") provides written notification to the Violating Party of a suspected Violation(s), or if the Violating Party discovers the Violation(s) itself, the Violating Party will, unless otherwise mutually agreed to by the Parties, within five (5) days following such notification or discovery, correct and/or remove the specific service arrangement that has resulted in the Violation(s). In addition, the Non-Violating Party may request a study or other such demonstration of available switch data or other information that the Violation(s) has been corrected and/or removed. It will constitute a default of this Agreement if a Party does not correct and/or remove the Violation after notification or discovery. It will constitute a default of this Agreement for repeated Violations.

### **3.2 EXCLUDED TRAFFIC**

This Agreement does not cover any traffic originating or terminating in areas other than the Local Service Exchange Areas set forth in Exhibit 1. This Agreement does not apply to any traffic that both originates and terminates within the same Local Service Exchange Area. Except as provided in Section 3.4, below, the terms and conditions of this Agreement are not applicable to IntraLATA toll traffic; switched access traffic; InterLATA toll traffic; or any other traffic that is not specifically identified in Section 3 as subject to this Agreement. Except as provided in Section 3.3 below, this Agreement is not applicable to traffic originated, terminated, or carried on third party networks not Parties to this Agreement or any traffic originated or terminated by users of Commercial Mobile Radio Services licensees. Subject to the provisions of Subsection 3.5 below, the Parties specifically exclude traffic terminating to Internet Service Providers, traffic terminating to other information service providers, and any traffic associated with ISP services. The Parties specifically exclude verification traffic and 911 traffic.

### **3.3 INTERMEDIARY EAS TRAFFIC FUNCTIONS**

Neither Party will provide an intermediary function for the other Party's connection of its end users to the end users of a third party telecommunications carrier without the consent of all parties and without the establishment of mutually agreeable terms and conditions governing the provision of the intermediary function.

### **3.4 ACCESS TRAFFIC**

Notwithstanding the requirements, warranties and representations set forth in this Section 3, whenever Brandenburg delivers traffic to KTC for termination on KTC's network, if Brandenburg cannot determine, because of the manner in which KTC has utilized its NPA-NXX codes to serve End Users and information service providers, whether the traffic is between End Users in different geographic areas between which EAS calling is exchanged between the Parties pursuant to this Agreement or whether the traffic is interexchange toll or access traffic, Brandenburg will charge KTC originating intrastate exchange access service charges for the originating usage pursuant to the access charge terms, conditions, and rates that Brandenburg applies to other intraLATA toll providers. If KTC deploys NXX codes in such a manner that Brandenburg cannot determine whether the traffic delivered to Brandenburg by KTC is EAS Traffic, Brandenburg will charge terminating intrastate network access charges to KTC.

### **3.5 TREATMENT OF INFORMATION SERVICE PROVIDER TRAFFIC**

**3.5.1** The Parties recognize that the network treatment of traffic directed to ISPs is unresolved and the subject of industry wide controversy. The Parties further recognize that the long term resolution of issues related to ISP Traffic will affect both Parties and will likely necessitate modification to this Agreement. In recognition of these factors, the Parties agree to transport and switch ISP Traffic in the manner described below in this Subsection 3.5 subject to amendment upon written agreement of the Parties.

**3.5.2** The Parties acknowledge that under current network and service arrangements, some ISP Traffic may be switched and transported as if this ISP Traffic were actual EAS Traffic. The Parties may treat ISP Traffic under these conditions until such time as a regulatory authority, court, or legislative body addresses the proper treatment of this traffic. The switching and transport of ISP Traffic over EAS facilities by either Party, however, will not be construed as either agreement or acknowledgment by the Parties that this arrangement is proper or required. In the event that the manner in which ISP Traffic is or may be treated is determined by an appropriate regulatory or legal body, or in the event that any action or decision of an appropriate regulatory or legal body results in a determination that the interim treatment of ISP Traffic pursuant to this Subsection is unlawful or improper, the Parties will negotiate in good faith immediate modification and/or replacement language to this Agreement to effect new terms and conditions consistent with any such lawful action or determination. Any new or modified terms will be effective with the effective date of any such lawful action or determination regarding the treatment of ISP Traffic between the Parties.

**3.5.3** The Parties agree that the mutual provisions and relative obligations pursuant to this Section 3.5, including the compensation provisions set forth in Section 3.5.4, represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and except for the compensation pursuant to Section 3.5.4, neither Party will owe a net due amount to the other Party for terminating ISP Traffic.

**3.5.4** Notwithstanding any other provision of this Agreement that would otherwise apply to EAS Traffic that is not ISP Traffic, the Parties agree to the following terms and conditions with respect to this Agreement and ISP Traffic: (1) to the extent not offset by equal exchange of ISP Traffic, the Party with which an ISP is connected ("ISP Serving Party") will be responsible for providing compensation to the other Party for the cost of additional trunking facilities provided by the other Party to originate calls to ISPs connected to the ISP Serving Party, and (2) if one Party decides to provide services solely to ISPs, then the Party with which the ISPs are connected ("ISP Serving Party") will provide compensation to the other Party for any and all trunking facilities that the other Party may install to originate traffic to the ISPs connected to the ISP Serving Party.

**3.5.5** At the request of one Party, the other Party will cooperate fully in identifying ISPs and ISP Traffic exchanged between the Parties.

### **3.6 TRUNK GROUPS**

**3.6.1** The Parties agree to interconnect their respective networks for the purpose of allowing each Party to deliver EAS Traffic to the other Party. The Parties agree to establish the Point(s) of Connection as set forth in Exhibit 1. Each Party will make available to the other Party, at the POC(s), trunks over which the originating Party can terminate EAS Traffic to the End Users of the terminating Party.

**3.6.2** The Parties agree to work cooperatively to forecast trunk requirements for the exchange of EAS Traffic between the respective End Users of the Parties. The Parties

agree to connect trunks at a minimum DS1. Where EAS Traffic volumes are not established, trunk groups will be provisioned initially based on forecasts jointly developed by the Parties. The Parties may decide to provision one-way or two-way trunking arrangements.

**3.6.3** Except as provided in Subsection 3.5 above, each Party is individually responsible for the provision and maintenance of facilities within its network to the POC which are necessary for routing, transporting, measuring, and billing traffic from the other Party's network and for delivering such traffic to the other Party's network in a mutually acceptable format and in a manner that neither destroys nor degrades the normal quality of service each Party provides to its respective end users.

### **3.7 SIGNALING**

Both Parties agree to exchange SS7 Common Channel Signaling ("CCS") between their respective networks where technically feasible for EAS calls exchanged pursuant to this Agreement. Both Parties will provide CCS connectivity in accordance with accepted industry practice and standard technical specifications. The Parties agree to cooperate on the exchange of all appropriate CCS messages for EAS call set-up, including ISDN User Part ("ISUP") and Transaction Capability User Part ("TCAP") messages to facilitate interoperability of CCS-based features and functions between their respective networks, including CLASS features and functions. All CCS signaling parameters will be provided in conjunction with EAS Traffic where available with specific trunk connections.

### **3.8 NETWORK MAINTENANCE AND TRUNK PROVISIONING**

The Parties will work cooperatively to install and maintain a reliable network for the provision of EAS calling between the Parties' respective end users. The Parties will exchange relevant information to maintain reliability. The Parties agree to work cooperatively to forecast trunk requirements.

### **3.9 NO COMPENSATION**

Except as provided in Subsections 3.4 and 3.5.4, the Parties agree that the mutual provisions and relative obligations of the Parties pursuant to this Agreement represent good and valuable consideration, the sufficiency of which between the Parties is acknowledged, and that neither Party has any obligation to provide any monetary compensation to the other Party for the other Party's origination or termination of traffic within the scope of this Agreement. The specific compensation terms and conditions set forth in this Agreement are related to, dependent on, and limited to the provision of local exchange service to end users located in the specific geographic areas set forth in Exhibit 1, the exchange of EAS Traffic between the Parties with respect to these geographic areas, and all other terms and conditions set forth in this Agreement.

### **4.0 DISCLAIMER OF REPRESENTATIONS AND WARRANTIES**

EXCEPT AS EXPRESSLY PROVIDED UNDER THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES, FUNCTIONS AND PRODUCTS IT PROVIDES UNDER OR CONTEMPLATED BY THIS AGREEMENT AND THE PARTIES DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

### **5.0 NO CANCELLATION OR NON-RECURRING CHARGES**

No cancellation charges will apply with respect to any of the terms of this Agreement. Except as provided in Subsections 3.4 and 3.5 above, no non-recurring charges will apply with

respect to any of the terms of this Agreement.

## 6.0 INDEMNIFICATION

6.1 Each Party agrees to release, indemnify, defend and hold harmless the other Party from and against all losses, claims, demands, damages, expenses, suits or other actions, or any liability whatsoever related to the subject matter of this Agreement, including, but not limited to, costs and attorneys' fees (collectively, a "Loss"), (a) whether suffered, made, instituted, or asserted by any other party or person, relating to personal injury to or death of any person, or for loss, damage to, or destruction of real and/or personal property, whether or not owned by others, incurred during the term of this Agreement and to the extent proximately caused by the acts or omissions of the indemnifying Party, regardless of the form of action, or (b) suffered, made, instituted, or asserted by its own customer(s) against the other Party arising out of the other Party's provision of services to the indemnifying Party under this Agreement. Notwithstanding the foregoing indemnification, nothing in this such Section 6.0 will affect or limit any claims, remedies, or other actions the indemnifying Party may have against the indemnified Party under this Agreement, any other contract, or any applicable Tariff(s), regulations or laws for the indemnified Party's provision of said services.

6.2 The indemnification provided herein is conditioned upon:

- (a) Prompt notice by the indemnified Party to the indemnifying Party of any action taken against the indemnified Party relating to the indemnification.
- (b) Sole authority by the indemnifying Party to defend any such action, including the selection of legal counsel. However, the indemnified Party may engage separate legal counsel at its sole cost and expense.
- (c) Prior written consent of the indemnified Party, which consent will not be unreasonably withheld before the indemnifying Party settles or consents to any judgement pertaining to the action.
- (d) The indemnified Party's assertion of any and all provisions in its Tariffs that limit liability to third parties as a bar to any recovery by the third party claimant in excess of such limitation of liability.
- (e) Reasonable cooperation and assistance in the defense of any such action by the indemnified Party.

6.3 In addition to its indemnity obligations under Sections 6.1 and 6.2, each Party will provide, in its Tariffs that relate to any Telecommunications Service or Network Element provided or contemplated under this Agreement, that in no case shall such Party or any of its agents, contractors or others retained by such parties be liable to any Customer or third party for (i) any Loss relating to or arising out of this Agreement, whether in contract or tort, that exceeds the amount such Party would have charged the applicable Customer for the service(s) or function(s) that gave rise to such Loss, or (ii) any Consequential Damages (as defined in subsection 7.2, below).

## 7.0 LIMITATION OF LIABILITY

7.1 Except in the instance of harm resulting from an intentional or grossly negligent action of one Party, the Parties agree to limit liability in accordance with this Section 7. The liability of either Party to the other Party for damages arising out of failure to comply with a direction to install, restore or terminate facilities; or out of failures, mistakes, omissions,

interruptions, delays, errors, or defects occurring in the course of furnishing any services, arrangements, or facilities hereunder will be determined in accordance with the terms of the applicable tariff(s) of the providing Party. In the event no tariff(s) apply, the providing Party's liability will not exceed an amount equal to the pro rata monthly charge for the period in which such failures, mistakes, omissions, interruptions, delays, errors or defects occur. Recovery of said amount will be the injured Party's sole and exclusive remedy against the providing Party for such failures, mistakes, omissions, interruptions, delays, errors or defects. Because of the mutual nature of the exchange of traffic arrangement between the Parties pursuant to this Agreement, the Parties acknowledge that the amount of liability incurred under this Section 7.1 may be zero.

**7.2** Neither Party will be liable to the other in connection with the provision or use of services offered under this Agreement for indirect, incidental, consequential, reliance or special damages, including (without limitation) damages for lost profits (collectively, "Consequential Damages"), regardless of the form of action, whether in contract, warranty, strict liability, or tort, including, without limitation, negligence of any kind, even if the other Party has been advised of the possibility of such damages; provided, that the foregoing will not limit a Party's obligation under Section 6.

**7.3** The Parties agree that neither Party will be liable to the customers of the other Party in connection with its provision of services to the other Party under this Agreement. Nothing in this Agreement is deemed to create a third party beneficiary relationship between the Party providing the service and the customers of the Party purchasing the service. In the event of a dispute involving both Parties with a customer of one Party, both Parties will assert the applicability of any limitations on liability to customers that may be contained in either Party's applicable Tariff(s).

## **8.0 TERM AND TERMINATION**

This Agreement is effective on the date on which this Agreement is approved by the Commission and continues in force and effect unless and until terminated as provided herein. Either Party may terminate this Agreement by providing written notice of termination to the other Party, such written notice to be provided at least eighty (80) days in advance of the date of termination.

## **9.0 COMPLIANCE WITH LAWS AND REGULATIONS**

**9.1** Each Party will comply with all federal, state, and local statutes, regulations, rules, ordinances, judicial decisions, and administrative rulings applicable to its performance under this Agreement. Each Party will promptly notify the other Party in writing of any governmental action that suspends, cancels, withdraws, limits, or otherwise materially affects its ability to perform its obligations hereunder.

**9.2** Notwithstanding the mutual commitment contained in this Agreement, the Parties nevertheless enter into this Agreement without prejudice to any positions they have taken previously, or may take in the future in any legislative, regulatory, or other public forum addressing any matters, including matters related specifically to this Agreement or other types of arrangements prescribed in this Agreement. If the Commission rejects this Agreement in whole or in part, the Parties agree to meet and negotiate in good faith to arrive at a mutually acceptable modification of the rejected portion(s). Further, this Agreement is subject to change, modification, or cancellation as may be required by a regulatory authority or court in the exercise of its lawful jurisdiction.

**9.3** The Parties agree that it is in their mutual interest to seek approval of this



Agreement, and the Parties will voluntarily file this Agreement with the Commission. The filing of this Agreement does not create obligations for either Party under the Act that do not otherwise apply.

## **10.0 SEVERABILITY**

If any provision of this Agreement is held by a court or regulatory agency of competent jurisdiction to be unenforceable, the rest of the Agreement remains in full force and effect and is not affected unless removal of that provision results in a material change to this Agreement. If a material change as described in this paragraph occurs as a result of action by a court or regulatory agency, the Parties will negotiate in good faith for replacement language that does not materially alter the economic effect of this Agreement on either Party. If replacement language cannot be agreed upon within a reasonable period, either Party may terminate this Agreement without penalty or liability for such termination upon written notice to the other Party in accordance with Section 8.0.

## **11.0 MISCELLANEOUS**

### **11.1 AUTHORIZATION**

**11.1.1** Brandenburg is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full power and authority to execute and deliver this Agreement and to perform the obligations hereunder.

**11.1.2** KTC is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky and has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

### **11.2 DISCLAIMER OF AGENCY; NO THIRD PARTY BENEFICIARIES; INDEPENDENT CONTRACTOR**

Neither this Agreement, nor any actions taken by either Party, in compliance with this Agreement, creates an agency or joint venture relationship between the Parties, or any relationship. Neither this Agreement, nor any actions taken by either Party in compliance with this Agreement, creates an agency, or any other type of relationship or third party liability between the Parties or between a Party and the customers of the other Party. This Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, creates or may be construed to create any third-party beneficiary rights hereunder. Nothing in this Agreement makes a Party a legal representative or agent of the other Party, nor does a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against or in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party. Except as otherwise expressly provided in this Agreement, nothing contained herein requires a Party to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.

### **11.3 FORCE MAJEURE**

Neither Party is responsible for delays or failures in performance resulting from acts or occurrences beyond the reasonable control of such Party, regardless of whether such delays or failures in performance were foreseen or foreseeable as of the date of this Agreement, including, without limitation: adverse weather conditions, fire, explosion, power failure, acts of God, war, revolution, civil commotion, or acts of public enemies; any law, order, regulation, ordinance or requirement of any government or legal body; or labor unrest, including, without limitation,

strikes, slowdowns, picketing or boycotts; or delays caused by the other Party or by other service or equipment vendors; or any other circumstances beyond the Party's reasonable control. In such event, the affected Party, upon giving prompt notice to the other Party, is excused from such performance on a day-to-day basis, and the other Party is likewise excused from performance of its obligations on a day-to-day basis, to the extent such inference relates to the Party's performance obligations. The affected Party shall use its best efforts to avoid or remove the cause(s) of non-performance, and both Parties will proceed to perform with dispatch once the cause(s) are removed or cease.

#### **11.4 TREATMENT OF PROPRIETARY AND CONFIDENTIAL INFORMATION**

**11.4.1** Both Parties agree that it may be necessary to provide each other during the term of this Agreement with certain confidential information, including trade secret information, including but not limited to, technical and business plans, technical information, proposals, specifications, drawings, procedures, customer account data, call detail records and like information (hereinafter collectively referred to as "Proprietary Information"). Proprietary Information remains the property of the disclosing Party. Both Parties agree that all Information must be in writing or other tangible form and clearly marked with a confidential, private or proprietary legend and that the Information will be returned to the owner within a reasonable time. Both Parties agree that the Information may be utilized by the non-disclosing Party only to the extent necessary to fulfill the terms of this Agreement or upon such terms and conditions as may be agreed upon between the Parties in writing, and for no other purpose. Both Parties agree to receive such Proprietary Information and not to disclose such Information. Both Parties agree to protect the Information received from distribution, disclosure or dissemination to anyone except employees and duly authorized agents of the Parties with a need to know such Information and which employees and agents agree to be bound by the terms of this Section. Both Parties will use the same standard of care to protect Information received as they would use to protect their own confidential and proprietary Information.

**11.4.2** Notwithstanding the foregoing, both Parties agree that there will be no obligation to protect any portion of the Information that is either: 1) made publicly available by the owner of the Information or lawfully disclosed by a non-party to this Agreement; 2) lawfully obtained from any source other than the owner of the Information; 3) publicly known through no wrongful act of the receiving Party; 4) previously known to the receiving Party without an obligation to keep it confidential; 5) required to be disclosed by any governmental authority or applicable law; or 6) approved for release by written authorization of the disclosing Party.

#### **11.5 CHOICE OF LAW**

The construction, interpretation, enforcement and performance of this Agreement will be in accordance with the laws of the Commonwealth of Kentucky without regard to its conflict of laws principles.

#### **11.6 TAXES**

**11.6.1** It is the mutual understanding of the Parties to this Agreement that there are no taxes specifically applicable to the subject matter of this Agreement or to either Party as a result of entering into this Agreement that would not otherwise be applicable to each respective Party. In the event that any government authority, however, determines to the contrary that a tax or taxes are applicable to the subject matter of this Agreement, then the following provisions will apply.

##### **11.6.2 Definitions**

**11.6.2.1** For purposes of this Subsection 11.6, the terms "taxes" and "fees" include but are not limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed, or sought to be imposed, on or with respect to the services furnished hereunder or measured by the charges or payments thereof, excluding any taxes levied on income.

**11.6.2.2** The term "Providing Party" means the Party whose rates apply to the transaction. The term "Purchasing Party" means the Party responsible for payment of compensation under this agreement with respect to a transaction. The term "Selling Party" has the same meaning as Providing Party.

### **11.6.3 Taxes and Fees Imposed Directly On Either Seller or Purchaser.**

**11.6.3.1** Taxes and fees imposed on the providing Party, which are not permitted or required to be passed on by the providing Party to its customer, will be borne and paid by the providing Party.

**11.6.3.2** Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, will be borne and paid by the purchasing Party.

### **11.6.4 Taxes and Fees Imposed on Purchaser But Collected And Remitted By Seller.**

**11.6.4.1** Taxes and fees imposed on the purchasing Party will be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.

**11.6.4.2** To the extent permitted by applicable law, any such taxes and/or fees will be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party remains liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

**11.6.4.3** If the purchasing Party determines that in its opinion any such taxes or fees are not payable, the providing Party will not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefore, and satisfying any other requirements under applicable law. If any authority seeks to collect any such tax or fee that the purchasing Party has determined and certified not to be payable, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In any such contest, the purchasing Party must promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

**11.6.4.4** In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party is responsible for such payment and is entitled to the benefit of any refund or recovery.

**11.6.4.5** If it is ultimately determined that any additional amount of such a

tax or fee is due to the imposing authority, the purchasing Party must pay such additional amount, including any interest and penalties thereon.

**11.6.4.6** Notwithstanding any provision to the contrary, the purchasing Party will, at its expense, protect, defend, indemnify and hold the providing Party harmless from and against any such tax or fee, interest or penalties thereon, or other charges or payable expenses, including reasonable attorney fees, with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

**11.6.4.7** Each Party must notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### **11.6.5 Taxes and Fees Imposed on Seller But Passed On To Purchaser.**

**11.6.5.1** Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its customer, will be borne by the purchasing Party.

**11.6.5.2** To the extent permitted by applicable law, any such taxes and/or fees will be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party will remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.

**11.6.5.3** If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties will consult with respect to the imposition and billing of such tax or fee, the Parties will consult with respect to the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party will retain ultimate responsibility for determining whether and to what extent any such taxes or fees are applicable, and the purchasing Party will abide by such determination and pay such taxes or fees to the providing Party. The providing Party will further retain ultimate responsibility for determining whether and how to contest the imposition of such taxes and fees; provided, however, that any such contest undertaken at the request of the purchasing Party will be at the purchasing Party's expense.

**11.6.5.4** In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party will be responsible for such payment and shall be entitled to the benefit of any refund or recovery.

**11.6.5.5** If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party will pay such additional amount, including any interest and penalties thereon.

**11.6.5.6** Notwithstanding any provision to the contrary, the purchasing Party will protect indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee.

**11.6.5.7** Each Party will notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

#### **11.6.6 Mutual Cooperation.**

In any contest of a tax or fee by one Party, the other Party will cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party will be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest.

### **11.7 BILLING AND PAYMENT; DISPUTED AMOUNTS**

**11.7.1** Because of the mutual benefits related to the subject matter of this Agreement, except for charges that arise pursuant to Subsection 3.4 and 3.5.5 or as may be set forth in Exhibit 2, the Parties agree that no charges will apply to the exchange of traffic pursuant to the terms of this Agreement. In the event that charges are applicable pursuant to Subsection 3.4, Subsection 3.5.5, and/or Exhibit 2, the following terms and conditions set forth in this Section 11.7 apply.

**11.7.2** The charges for any arrangement under this Agreement are to be billed monthly and payable, in immediately available U.S. funds, within thirty (30) days of the date of the bill.

**11.7.3** Although it is the intent of both Parties to submit timely and accurate statements of charges, failure by either Party to present statements to the other Party in a timely manner does not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and the billed Party is not entitled to dispute the billing Party's statement(s) based on such Party's failure to submit them in a timely fashion.

**11.7.4** If any portion of an amount due to a Party (the "Billing Party") under this Agreement is subject to a bona fide dispute between the Parties, the Party billed (the "Non-Paying Party") will notify the Billing Party of the amount it disputes ("Disputed Amount") within thirty (30) days of its receipt of the invoice containing such disputed amount and include in such notice the specific details and reasons for disputing each item. The Non-Paying Party must pay the Billing Party all undisputed amounts when due.

**11.7.5** If the Parties are unable to resolve the issues related to the Disputed Amounts in the normal course of business within sixty (60) days after delivery to the Billing Party of notice of the Disputed Amounts, each of the Parties will appoint a designated representative that has authority to settle the dispute and that is at a higher level of management than the persons with direct responsibility for administration of this Agreement. The designated representatives will meet as often as they reasonably deem necessary in order to discuss the dispute and negotiate in good faith in an effort to resolve such dispute. The specific format for such discussions will be left to the discretion of the designated representatives. However, all reasonable requests for relevant information made by one Party to the other Party must be honored.

**11.7.6** If the Parties are unable to resolve issues related to the Disputed

Amounts within thirty (30) days after the Parties' appointment of designated representatives pursuant to subsection 11.7.5, then either Party may proceed under the dispute resolution provisions of Section 11.8.

**11.7.7** The Parties agree that all negotiations pursuant to this subsection 11.7 will remain confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and state rules of evidence.

**11.7.8** Any undisputed amounts not paid when due will accrue interest from the date such amounts were due at the lesser of (i) one and one-half percent (1-1/2%) per month or (ii) the highest rate of interest that may be charged under applicable law.

## **11.8 DISPUTE RESOLUTION**

Any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms must be addressed in the first instance by good faith negotiation between the Parties. Should such negotiations fail to resolve the dispute in a reasonable time, either Party may initiate an appropriate action in a regulatory or judicial forum of competent jurisdiction.

## **11.9 NOTICES**

Notices given by one Party to the other Party under this Agreement must be in writing and (i) delivered personally, (ii) delivered by express delivery service, or (iii) mailed, certified mail or first class U.S. mail postage prepaid, return receipt requested to the following addresses of the Parties:

To: Brandenburg

And

To: Kentucky Telephone Company  
Joe McClung, President  
101 Mill Street  
Letichfield, KY 42754

And

Kentucky Telephone Company  
Joe McClung, President  
101 Mill Street  
Letichfield, KY 42754

or to such other address as either Party may designate by proper notice. Notices will be deemed given as of (i) the next business day when notice is sent via express delivery service or personal delivery, or (ii) three (3) days after mailing in the case of first class or certified U.S. mail.

#### **11.10 JOINT WORK PRODUCT**

This Agreement is the joint work product of the Parties and has been negotiated by the Parties and will be fairly interpreted in accordance with its terms and, in the event of any ambiguities, no inferences will be drawn against either Party.

#### **11.11 NO LICENSE**

**11.11.1** Nothing in this Agreement may be construed as the grant of a license, either express or implied, with respect to any patent, copyright, trademark, trade name, trade secret or any other proprietary or intellectual property now or hereafter owned, controlled or licensable by either Party. Neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.

**11.11.2** Neither Party has any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its customers based on or arising from any claim, demand, or proceeding by any third party alleging or asserting that the use of any circuit, apparatus, or system, or the use of any software, or the performance of any service or method, or the provision of any facilities by either Party under this Agreement, alone or in combination with that of the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third party. Each Party, however, will offer the other reasonable cooperation and assistance in the defense of any such claim.

**11.11.3** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY THE PARTIES OF THE OTHER'S FACILITIES, ARRANGEMENTS, OR SERVICES PROVIDED UNDER THIS AGREEMENT WILL NOT GIVE RISE TO A CLAIM BY ANY THIRD PARTY OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT OF SUCH THIRD PARTY.

#### **11.12 SURVIVAL**

The Parties' obligations under this Agreement which by their nature are intended to

continue beyond the termination or expiration of this Agreement survive the termination or expiration of this Agreement.

#### **11.13 PUBLICITY AND USE OF TRADEMARKS OR SERVICE MARKS**

Neither Party nor its subcontractors or agents may use the other Party's trademarks, service marks, logos, company name or other proprietary trade dress in any advertising, press releases, publicity matters or other promotional materials without such Party's prior written consent.

#### **11.14 NON-WAIVER**

Failure of either Party to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder may not be construed as a continuing or future waiver of such term, condition, right or privilege. The Parties recognize that Brandenburg is a Rural Telephone Company and is entitled to all rights afforded Rural Telephone Companies under the Act including, but not limited to, the rights afforded Brandenburg under 47 USC § 251(f).

#### **11.15 ENTIRE AGREEMENT**

This Agreement and any Exhibits, Schedules, or tariffs which are incorporated herein by this reference, sets forth the entire understanding and supersedes prior agreements between the Parties relating to the subject matter contained herein and merges all prior discussions between them, and neither Party is bound by any definition, condition, provision, representation, warranty, covenant or promise other than as expressly stated in this Agreement or as is contemporaneously or subsequently set forth in writing and executed by a duly authorized officer or representative of the Party to be bound thereby.

#### **11.16 COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which is deemed an original and all of which together shall constitute one and the same instrument.



**11.17 MODIFICATION, AMENDMENT, SUPPLEMENT, OR WAIVER**

No modification, amendment, supplement to, or waiver of the Agreement or any of its provisions shall be effective and binding upon the Parties unless it is made in writing and duly signed by the Parties. A failure or delay of either Party to enforce any of the provisions hereof, to exercise any option which is herein provided, or to require performance of any of the provisions hereof shall in no way be construed to be a waiver of such provisions or options.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of this \_\_\_\_ day of \_\_\_\_\_, 2007.

Brandenburg Telephone Company, Inc.

Kentucky Telephone Co.

By \_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Monday, February 13, 2006 4:14 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Steven Watkins'  
**Subject:** RE: Conf Call with Brandenburg

Please see the attached letter. If you have any questions, please give me a call or send me an email back.

Thanks,

Randall

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, February 10, 2006 11:27 AM  
**To:** 'Randall Bradley'  
**Cc:** John Monroe; Mark Turner  
**Subject:** Conf Call with Brandenburg  
**Importance:** High

Randall – Below are some proposed times next week for our call. Please let me know what time works for you. Thanks.

Monday before 2.  
Tuesday before 11 or 2-4  
Wednesday after 11

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, February 09, 2006 2:22 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Steven Watkins'  
**Subject:**

Rick,

Attached is the revised Exhibits based on our conference call. We have added all the nxx's in question and also revised the exhibit to state that MCI will bring the trunks into our Radcliff CO. Thanks.

Randall



Rick,

Several other carriers have requested EAS and have entered into terms and conditions similar to those that we sent MCI. As we previously indicated, we do not see any reason to alter the term from those already in place with other carriers. Regardless, per our last conference call, Brandenburg Telephone Co. believed that MCI's only significant problem with the agreement was the trunking meet point and the potential for compensation for trunking facilities. Since this issue was an apparent miscommunication, we thought our existing negotiated EAS would fit the business needs of MCI.

If there are some sections of the Agreement that are major concerns to MCI and that have been redlined, please let us know which sections these are, and we will take a look at them and respond. This may be more expedient in the interim while we find a time when everyone is available for a call.

Thanks.

Randall Bradley

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**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Monday, February 13, 2006 10:06 AM  
**To:** 'Rick McGolerick'  
**Cc:** 'John Monroe'; 'Mark Turner'; 'Steven Watkins'  
**Subject:** RE: Conf Call with Brandenburg

These dates will not work with us. I will have you a response to your email concerning the status of your redline and also our last conference call hopefully by in the morning. At that time, we will check our schedules to come up with a time that may work for another conference call if necessary. Thanks.

Randall

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, February 10, 2006 11:27 AM  
**To:** 'Randall Bradley'  
**Cc:** John Monroe; Mark Turner  
**Subject:** Conf Call with Brandenburg  
**Importance:** High

Randall -- Below are some proposed times next week for our call. Please let me know what time works for you. Thanks.

Monday before 2.  
Tuesday before 11 or 2-4  
Wednesday after 11

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, February 09, 2006 2:22 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Steven Watkins'  
**Subject:**

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Attached is the revised Exhibits based on our conference call. We have added all the nxx's in question and also revised the exhibit to state that MCI will bring the trunks into our Radcliff CO. Thanks.

Randall

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, February 09, 2006 2:22 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Steven Watkins'  
**Subject:**

Rick,

Attached is the revised Exhibits based on our conference call. We have added all the nxx's in question and also revised the exhibit to state that MCI will bring the trunks into our Radcliff CO. Thanks.

Randall

EXHIBIT 1

Local Service Exchange Areas Between Which Extended Area Service (EAS) Traffic  
Is To Be Exchanged Pursuant to this Agreement.

This Exhibit specifies the Local Service Exchange Areas and Extended Area Services covered pursuant to the AGREEMENT FOR THE TRANSPORT AND TERMINATION OF EXTENDED AREA SERVICE (EAS) TRAFFIC between Brandenburg Telephone Company, Inc. ("Brandenburg") and MCI ("MCI") as follows:

I. Local Service Areas Covered by this Agreement:

1. The RADCLIFF Local Service Exchange Area is the geographic area covering the North Radcliff exchange as operated by Brandenburg on January 1, 2006 with a V&H of V=06621 and H=02757.
2. The VINE GROVE Local Service Exchange Area is the geographic area covering the Vine Grove exchange as operated by Brandenburg on January 1, 2006 with a V&H of V=06629 and H= 02759.
3. The MCI Local Service Exchange Area is the geographic area covering the Elizabethtown exchange as operated by Kentucky Alltel on January 1, 2006 with a V&H of V=06642 and H=02729.

II. Extended Area Service Traffic Covered by this Agreement includes:

1. Radcliff-Elizabethtown EAS traffic includes calls that originate (from Brandenburg NPA-NXX of 270-351,270-352,270-219,270-272) and terminate in Kentucky Alltel's Area (to MCI's ported numbers with NPA-NXX of 270-234,270-360,270-706,270-735,270-737,270-739,270-763,270-765,270-766,270-769, and 270-982) and calls that originate in Kentucky Alltel's area (from MCI's ported numbers with NPA-NXX's of 270-234,270-360,270-706,270-735,270-737,270-739,270-763,270-765,270-766,270-769, and 270-982) and terminate to BRANDENBURG NPA-NXX's of 270-351,270-352,270-219, and 270-272.
2. Vine Grove-Elizabethtown EAS traffic includes calls that originate (from Brandenburg NPA-NXX of 270-877) and terminate in Kentucky Alltel's Area (to MCI's ported numbers with NPA-NXX of 270-234,270-360,270-706,270-735,270-737,270-739,270-763,270-765,270-766,270-769, and 270-982) and calls that originate in Kentucky Alltel's area (from MCI's ported numbers with NPA-NXX's of 270-234,270-360,270-706,270-735,270-737,270-739,270-763,270-765,270-766,270-769, and 270-982) and terminate to

BRANDENBURG NPA-NXX's of 270-877.

II. Designation of Points of Connection For the Delivery of EAS Traffic Pursuant to this Agreement:

THE PARTIES MUST REVISE THIS EXHIBIT I BY COMPLETING THIS SECTION III PRIOR TO THE EXCHANGE OF EAS TRAFFIC. THE PARTIES WILL COMPLETE THIS SECTION III AFTER THE PARTIES HAVE AGREED TO SPECIFIC TRUNKING ARRANGMENTS AND POINT(S) OF INTERCONNECTION.

1. For BRANDENBURG Area EAS and MCI-AlltelArea EAS, the Parties agree to connect 24 trunks via a T-1 by means of copper at Brandenburg's Radcliff CO with V&H of V=06621 and H=02757.

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Brandenburg Telephone Company

MCI

By \_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_



Exhibit 2  
Schedule of Charges for the Exchange of Extended Area Service (EAS) Traffic  
Pursuant to this Agreement.

This Exhibit specifies the charges between the Parties pursuant to the AGREEMENT FOR THE EXCHANGE OF TWO-WAY EXTENDED AREA SERVICE (EAS) TRAFFIC between Brandenburg Telephone Company, Inc. ("Brandenburg") and MCI ("MCI") as follows:

Compensation is pursuant to the terms and conditions of Sections 3.5.3 and 3.9 of the Agreement.

Approved and executed this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

Brandenburg Telephone Company, Inc.

MCI

By \_\_\_\_\_

By \_\_\_\_\_

Printed \_\_\_\_\_

Printed \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Tuesday, February 07, 2006 4:36 PM  
**To:** 'Rick McGolerick'  
**Subject:** RE: Conf Call

Steve and I are currently working on the changes. We should have something to you soon. Thanks.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Monday, February 06, 2006 10:02 AM  
**To:** 'Randall Bradley'  
**Subject:** RE: Conf Call

Randall – Any estimate on when we will be getting feedback from you all?

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, January 25, 2006 4:23 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Mark Turner'; 'John Monroe'; 'Steven Watkins'  
**Subject:** RE: Conf Call

Rick,

Tuesday, January 31<sup>st</sup> at 3:00 p.m. E.S.T. works for Brandenburg.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Wednesday, January 25, 2006 3:14 PM  
**To:** 'Randall Bradley'  
**Cc:** Mark Turner; John Monroe  
**Subject:** Conf Call  
**Importance:** High

Randall – We are available anytime before 4PM EST on Monday and Tuesday. Please let me know what day and time works for you. We will be using the bridge number below, thanks.

USA Toll Free Number: 877-695-7193  
USA Toll Number: +1-712-421-2518  
VNET Number: 333-1808  
PARTICIPANT PASSCODE: 336939

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]

**Sent:** Wednesday, January 25, 2006 11:55 AM

**To:** 'Rick McGolerick'

**Subject:**

Attached is Brandenburg Telephone Company's letter per our conference call.

Randall Bradley

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, January 25, 2006 11:55 AM  
**To:** 'Rick McGolerick'  
**Subject:**

Attached is Brandenburg Telephone Company's letter per our conference call.

Randall Bradley

---

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, January 25, 2006 4:23 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Mark Turner'; 'John Monroe'; 'Steven Watkins'  
**Subject:** RE: Conf Call

Rick,

Tuesday, January 31<sup>st</sup> at 3:00 p.m. E.S.T. works for Brandenburg.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Wednesday, January 25, 2006 3:14 PM  
**To:** 'Randall Bradley'  
**Cc:** Mark Turner; John Monroe  
**Subject:** Conf Call  
**Importance:** High

Randall – We are available anytime before 4PM EST on Monday and Tuesday. Please let me know what day and time works for you. We will be using the bridge number below, thanks.

USA Toll Free Number: 877-695-7193  
USA Toll Number: +1-712-421-2518  
VNET Number: 333-1808  
PARTICIPANT PASSCODE: 336939

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, January 25, 2006 11:55 AM  
**To:** 'Rick McGolerick'  
**Subject:**

Attached is Brandenburg Telephone Company's letter per our conference call.

Randall Bradley



COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED

AUG 01 2008

PUBLIC SERVICE  
COMMISSION

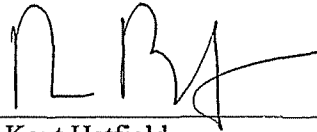
In the Matter of:

AN INVESTIGATION INTO THE TRAFFIC )  
DISPUTE BETWEEN WINDSTREAM )  
KENTUCKY EAST, LLC, BRANDENBURG )  
TELEPHONE COMPANY AND ) Case No. 2008-00203  
MCImetroMETRO ACCESS TRANSMISSION )  
SERVICES LLC D/B/A/ VERIZON ACCESS )

MCIMETRO ACCESS TRANSMISSION SERVICES, LLC RESPONSES TO  
WINDSTREAM KENTUCKY EAST, LLC'S FIRST SET OF DATA REQUESTS AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS

MCImetro Access Transmission Services LLC d/b/a Verizon Access Transmission Services  
("MCImetro" or "Verizon"), by its undersigned counsel, responds to Windstream Kentucky East,  
LLC's data requests issued July 17, 2008.

Respectfully submitted,



C. Kent Hatfield  
Douglas F. Brent  
STOLL KEENON OGDEN, PLLC  
2000 PNC Plaza  
500 West Jefferson Street  
Louisville, Kentucky 40202  
Phone: (502) 333-6000  
Fax: (502) 333-6099  
[douglas.brent@skofirm.com](mailto:douglas.brent@skofirm.com)

**REQUEST NO. 8** Please identify all instances in which Verizon has acknowledged to Brandenburg or any other entity, including Windstream, that Brandenburg's routing of traffic through Windstream's Elizabethtown end office is contrary to industry routing protocols. Please provide in detail the circumstances surrounding such acknowledgement.

**Responsible Person:** counsel for MCImetro and Rick McGolerick

**RESPONSE:**

Objection. This response is vague insofar as it refers to undefined "industry routing protocols." Despite that objection and without waiving it, there have been communications between MCImetro and Brandenburg related to Windstream's claims about Brandenburg's local number portability queries and routing practices. On February 21, 2007, Rick McGolerick of MCImetro replied to an email from Randall Bradley of Brandenburg Telephone Company. Mr. Bradley's email included a message to Mr. Bradley from Windstream that discussed Brandenburg's routing. Mr. McGolerick's reply stated, in part:

Randall -- I just left you a voicemail regarding the email below. During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AllTel tandem and it should be going to the Bell South Tandem. Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23<sup>rd</sup>?



**REQUESTS FOR PRODUCTION OF DOCUMENTS**

**REQUEST NO. 17** Please produce all documents identified, referenced, or otherwise implicated by the foregoing data requests and your responses to those data requests.

**Responsible Person:** counsel for MCImetro

**RESPONSE:**

Please see attached.

**Brent, Douglas**

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**From:** Randall Bradley [rbradley@bbtel.com]

**Sent:** Wednesday, June 04, 2008 8:43 AM

**To:** McGolerick, Rick (Rick)

**Cc:** Turner, Mark (MarkETurner)

Rick,

Pursuant to our conversation yesterday morning, we have determined that Brandenburg Telecom can provision special access DS1's from our boundary to the Windstream switch at a monthly cost of \$380.99 per T-1 and a non-recurring installation cost of \$450.00 per T-1 over which AOL dial up calls from Brandenburg Telephone Company customers can be terminated.

Thanks,

Randall Bradley  
270-422-2121

## Brent, Douglas

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**From:** Randall Bradley [rbradley@bbtel.com]  
**Sent:** Monday, June 09, 2008 5:00 PM  
**To:** McGolerick, Rick (Rick)  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:** RE: POI Proposal

Rick,  
Brandenburg Telephone is not agreeable to the proposal to pay for half of the buildout of Verizon to get to the meet point of Brandenburg Telephone Co. and Windstream. Brandenburg Telephone has offered to provide at our own expense to bring facilities from Brandenburg's office to our current meet point with Windstream which is at the edge of Brandenburg's network in order to meet Verizon. Verizon can either buy special access facilities from another provider to get to this meet point, build out to this meet point, or may elect to purchase special access from Brandenburg Telecom, pursuant to our proposal by email on June 4<sup>th</sup>, in order to get to this meet point with Brandenburg Telephone Co.  
If you have any questions, please give me a call at 270-422-2121.  
Thanks,  
Randall

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**From:** McGolerick, Rick (Rick) [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, June 06, 2008 3:46 PM  
**To:** Randall Bradley  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:** POI Proposal  
**Importance:** High

Randall -- VzB would be agreeable to build out to Brandenburg under a 50/50 split of the total expense for interconnection under a bill and keep arrangement. Please let me know if this agreeable to Brandenburg.

Thanks.

*Rick McGolerick*  
*National Carrier Contracts and Initiatives*  
*(703) 886 - 4032*



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**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, June 04, 2008 8:43 AM  
**To:** McGolerick, Rick (Rick)  
**Cc:** Turner, Mark (MarkETurner)  
**Subject:**

Rick,  
Pursuant to our conversation yesterday morning, we have determined that Brandenburg Telecom can provision special access DS1's from our boundary to the Windstream switch at a monthly cost of \$380.99 per T-1 and a non-recurring installation cost of \$450.00 per T-1 over

7/31/2008

which AOL dial up calls from Brandenburg Telephone Company customers can be terminated.  
Thanks,  
Randall Bradley  
270-422-2121

**Brent, Douglas**

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**From:** McGolerick, Rick (Rick) [rick.mcgolerick@verizonbusiness.com]  
**Sent:** Wednesday, February 21, 2007 1:40 PM  
**To:** Randall Bradley  
**Cc:** Turner, Mark (MarkETurner); Olson, Lee M (lee); Monroe, John  
**Subject:** RE: [Fwd: Brandenburg LNP Query]  
**Importance:** High

Randall – I just left you a voicemail regarding the email below. During our discussions regarding an EAS agreement that started back in September 2005 we indicated that it was our understanding that traffic was being routed incorrectly to the Windstream/AllTel tandem and it should be going to the Bell South Tandem. Can you provide what steps Brandenburg is taking to resolve the issue in order to meet Windstream's deadline of Friday, February 23<sup>rd</sup>?

Please give me a call today to discuss, thanks.

*Rick McGolerick*  
*National Carrier Contracts and Initiatives*  
*(703) 749-7338*



-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, February 21, 2007 10:55 AM  
**To:** McGolerick, Rick (Rick)  
**Subject:** FW: [Fwd: Brandenburg LNP Query]

-----Original Message-----

**From:** George Lewis [mailto:gtlewis@bbtel.com]  
**Sent:** Wednesday, February 21, 2007 8:14 AM  
**To:** Randall Bradley  
**Subject:** [Fwd: Brandenburg LNP Query]

----- Original Message -----

**Subject:** Brandenburg LNP Query  
**Date:** Thu, 15 Feb 2007 12:24:44 -0500  
**From:** Williams, Steven G <Steven.G.Williams@windstream.com>  
**To:** <troynevitt@bbtel.com>, <gtlewis@bbtel.com>  
**CC:** Gilmer, Ted A <Ted.A.Gilmer@windstream.com>, Fuller, Anthony <Anthony.Fuller@windstream.com>

During a four day audit of traffic in the Elizabeth office, we discovered that Brandenburg Telephone is sending thousands of calls over its iCO trunk groups for calls that do not terminate to Windstream.

This is mainly due to the fact that Brandenburg Telephone is not completing LNP queries. Your CLEC originated traffic appears to have already completed the LNP query.

Windstream's Elizabethtown end office completed approximately 12,000 LNP queries, and transited over 866,528 MOU (Minutes Of Use) for calls originated from Brandenburg Telephone.

Since the traffic is intra.LATA and your switch is capable, Brandenburg Telephone must complete its own LNP dips, and as the industry standard, route the call based on the LRN.

Brandenburg Telephone needs to complete this work before Friday, February 23, 2007. On Monday, February 26, Windstream will implement the necessary translations changes on the Brandenburg Telephone trunk groups to correct this problem and allow only traffic that has completed the LNP query to terminating to the Windstream Elizabethtown office.

Please contact me if you would like to discuss.

Thanks,  
Steven Williams  
Staff Manager - Translations Engineering  
Windstream Communication  
704-845-7258  
steven.g.williams@windstream.com



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The information contained in this message, including attachments, may contain privileged or confidential information that is intended to be delivered only to the person identified above. If you are not the intended recipient, or the person responsible for delivering this message to the intended recipient, Windstream requests that you immediately notify the sender and advise that you do not read the message or its attachments, and that you delete them without copying or sending them to anyone.

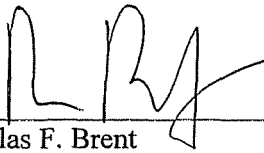
**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail and United States First Class Mail, postage prepaid, on this 31st day of July, 2008 upon:

Bruce F. Clark  
STITES & HARBISON, PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602

John E. Selent  
Edward T. Depp  
Holly C. Wallace  
DINSMORE & SHOHL, LLP  
1400 PNC Plaza  
500 West Jefferson Street  
Louisville, KY 40202  
john.selent@dinslaw.com  
tip.dep@dinslaw.com  
holly.wallace@dinslaw.com

Allison T. Willoughby  
President  
Brandenburg Telecom, LLC  
200 Telco Drive  
Brandenburg, Kentucky 40108



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Douglas F. Brent





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**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Wednesday, February 21, 2007 10:55 AM  
**To:** 'Rick McGolerick'  
**Subject:** FW: [Fwd: Brandenburg LNP Query]

-----Original Message-----

**From:** George Lewis [mailto:gtlewis@bbtel.com]  
**Sent:** Wednesday, February 21, 2007 8:14 AM  
**To:** Randall Bradley  
**Subject:** [Fwd: Brandenburg LNP Query]

----- Original Message -----

**Subject:** Brandenburg LNP Query  
**Date:** Thu, 15 Feb 2007 12:24:44 -0500  
**From:** Williams, Steven G <[Steven.G.Williams@windstream.com](mailto:Steven.G.Williams@windstream.com)>  
**To:** <[troynevitt@bbtel.com](mailto:troynevitt@bbtel.com)>, <[gtlewis@bbtel.com](mailto:gtlewis@bbtel.com)>  
**CC:** Gilmer, Ted A <[Ted.A.Gilmer@windstream.com](mailto:Ted.A.Gilmer@windstream.com)>, Fuller, Anthony  
<[Anthony.Fuller@windstream.com](mailto:Anthony.Fuller@windstream.com)>

During a four day audit of traffic in the Elizabeth office, we discovered that Brandenburg Telephone is sending thousands of calls over its ICO trunk groups for calls that do not terminate to Windstream. This is mainly due to the fact that Brandenburg Telephone is not completing LNP queries. Your CLEC originated traffic appears to have already completed the LNP query.

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Please contact me if you would like to discuss.  
Thanks,  
Steven Williams  
Staff Manager - Translations Engineering

7/23/2008

Windstream Communication  
704-845-7258  
[steven.g.williams@windstream.com](mailto:steven.g.williams@windstream.com)



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**Depp,Tip**

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**From:** Randall Bradley [rbradley@bbtel.com]  
**Sent:** Wednesday, July 23, 2008 11:57 AM  
**To:** Depp,Tip  
**Subject:** FW: EAS Agreement and BLOCKING

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**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Monday, January 23, 2006 3:27 PM  
**To:** 'Rick McGolerick'  
**Cc:** 'Mark Turner'  
**Subject:** RE: EAS Agreement and BLOCKING

Rick,

I have a draft of our response back to concerning the EAS agreement. I'm awaiting one person's review of the draft before I can get it to you. I'll send it over to you as soon as this review is completed. Thanks.

-----Original Message-----

**From:** Rick McGolerick [mailto:rick.mcgolerick@verizonbusiness.com]  
**Sent:** Friday, January 20, 2006 2:11 PM  
**To:** 'Randall Bradley'  
**Cc:** Mark Turner  
**Subject:** RE: EAS Agreement and BLOCKING  
**Importance:** High

Randall – Following up our call yesterday. When can we expect a response regarding the EAS agreement? More importantly though, our customer is still receiving complaints regarding blocking that has been going on since September. We need an interim solution while the agreement is being worked out. Can you please respond ASAP? Thanks.

-----Original Message-----

**From:** Randall Bradley [mailto:rbradley@bbtel.com]  
**Sent:** Thursday, September 08, 2005 9:31 AM  
**To:** rick.mcgolerick@mci.com  
**Subject:** EAS Agreement

Rick,

Attached is our standard EAS agreement that we have with several providers. After review, please give me a call if you have any questions. Thanks.

Randall Bradley  
270-422-2121  
270-422-4448 Fax

Brandenburg Telephone Co.  
200 Telco Drive  
Brandenburg, KY 40108

4/28/2010